Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1994

UNIFIED SCHOOL DISTRICT NO. 244, *ET AL.*,

Petitioners,

v.

STATE OF KANSAS, *ET AL.*,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Kansas

PETITION FOR WRIT OF CERTIORARI

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Questions Presented

Does the *Kansas School District Finance and Quality Performance Act* (Kan. Stat. Ann. § 72-6405 *et seq.*, Appendix App. 266 through App. 309):

1) Take property without just compensation under the guise of taxation, in violation of the 5th and 14th Amendments to the United States Constitution, because local school district taxpayers are subject to an *ad valorem* tax which is more than three times the cost of the benefits delivered by the local taxing district; and

2) Violate the one-person, one-vote guarantee of the 14th Amendment because it interferes with the right of the voters of local school districts to elect local school board members who, in turn, are able to exercise the legislative function guaranteed to them by Article 6, § 5 of the Kansas Constitution?

List of Parties[1]

The Petitioners to this Court are: (i) the duly elected members of the Board of Education (the "Board") of Unified School District No. 244, Coffey County, Kansas (the "District"); (ii) the District; (iii) property owners; (iv) taxpayers and electorate of the District; and (v) children of the District by and through their natural guardian and next of friend.

The Respondents are the State of Kansas and the Kansas State Board of Education.

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[1] The full name of all of the parties from the four separate but consolidated cases below are set forth in App. 241 through App. 248. Petitioners were known as the "Burlington Plaintiffs" below, App. 245.

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The *Opinion* of Kansas Supreme Court is reported at *U.S.D. No. 229, et al. v. State of Kansas, et al.*, 256 Kan. 232, ___ P.2d ___ (1994) (App. 1 through App. 70). The Kansas District Court's *Order and Summary Decision*, and, *Order and Memorandum of Decision* from the three week trial are unreported and reproduced in the Appendix at App. 72 through App. 81, and, App. 82 through App. 248, respectively. The Kansas District Court's *Memorandum Decision and Order* from the Petitioners' preliminary injunctive relief hearing is unreported and reproduced in the Appendix at App. 249 through App. 262.

JURISDICTION

The Kansas Supreme Court rendered its opinion on December 2, 1994, App. 5. The Kansas Supreme Court denied Petitioner's timely request for a rehearing and reconsideration on February 8, 1995, App. 71. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. § 1257(a) and the Rules of the Supreme Court of the United States, Rule 10.1(c).

CONSTITUTIONAL AND STATUTORY PROVISIONS

1) Constitutional Provisions.

U.S. Constitution, Amendment 5:

> "No person shall be . . . deprived of life, liberty, or property, without due-process of law;

nor shall private property be taken for public use, without just compensation."

U.S. Constitution, Amendment 14:

" . . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Kansas Constitution, Article 6, § 1:

"The legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools, educational institutions and related activities which may be organized and changed in such manner as may be provided by law."

Kansas Constitution, Article 6, § 5:

"Local public schools under the general supervision of the state board of education shall be maintained, developed and operated by locally elected boards. . . . "

Kansas Constitution, Article 6, § 6(b):

"The legislature shall make suitable provision for finance of the educational and interests of the state. . . . "

2) Statutory Provisions

The *Kansas School District Finance and Quality Performance Act*, Kan. Stat. Ann. § 72-6405 *et seq.*, (the "Act") is

reproduced at App. 266 through App. 309. Kan. Stat. Ann. § 72-6431 provides:

> "***Ad valorem* tax levy required; purposes; rate; disposition of proceeds.** (a) The board of each district shall levy an *ad valorem* tax upon the taxable tangible property of the district in the school years specified in subsection (b) for the purposes of:
>
> (1) Financing that portion of the district's general fund budget which is not financed from any other source provided by law;
>
> (2) paying a portion of the costs of operating and maintaining public schools in partial fulfillment of the constitutional obligation of the legislature to finance the educational interests of the state; and
>
> (3) paying a portion of the principal and interest on bonds issued by cities under authority of Kan. Stat. Ann. § 12-1774, and amendments thereto, for the financing of redevelopment projects upon property located within the district.
>
> (b) The tax required under subsection (a) shall be levied at a rate of 35 mills in the 1994-95 and 1995-96 school years. (*Note* for 1992-93 it was 32 mills, and, 1993-94 it was 33 mills).
>
> (c) The proceeds from the tax levied by a district under authority of this section, except the proceeds of such tax levied for the purpose of paying a portion of the principal and interest on bonds issued by cities under authority of Kan. Stat. Ann. § 12-1774, and amendments thereto, for the financing of redevelopment projects upon property located within the district,

shall be deposited in the general fund of the district.

(d) On June 1 of each year, the amount, if any, by which a district's local effort exceeds the amount of the district's state financial aid, as determined by the state board, shall be remitted to the state treasurer. Upon receipt of any such remittance, the state treasurer shall deposit the same in the state treasury to the credit of the state school district finance fund.

(e) No district shall proceed under Kan. Stat. Ann. § 79-1964, 79-1964a or 79-1964b, and amendments to such sections."

STATEMENT OF THE CASE

1) Introduction

The federal questions for which Petitioners seek a writ of certiorari arise out of the application of the Act to the Petitioners. The Kansas Supreme Court noted the Act (i) to be "a major policy shift in how public school education is viewed and how it is to be funded" (App. 8) and (ii) that it "boldly goes where Kansas has never gone before" (App. 70). The Act's major policy shift unconstitutionally affects the Petitioners by taking property under the guise of taxation without just compensation and by interfering with Petitioners' state constitutional guarantee of electing local school board members who are sufficiently empowered to exercise local governmental functions.

The State of Kansas has had an educational article in its constitution since statehood. Article 6, the Educational Article (App. 263 through App. 266), was last amended

by ratification of the Kansas electorate on November 8, 1966. This ratification constitutionally guaranteed Kansans a tradition which has existed in the United States since colonial days of local public schools being operated by laymen elected from the same locale.

The Act mandates (i) the District's operating budget, Kan. Stat. Ann. § 72-6409, App. 271 through App. 272, and (ii) the *ad valorem* mill levy to fund that budget, Kan. Stat. Ann. § 72-6431, App. 293 through App. 294. Before the Act's implementation on July 1, 1992, the Petitioners' school board had exercised these governmental decisions within statutorily prescribed limits. It established the District's operating budget and its funding with the local tax levy necessary to meet the educational needs of the District. Under this scheme, the District had admirably fulfilled the statewide educational goals set by the state legislature, App. 132. In contrast to all prior Kansas school finance legislation, the Act now requires every school board to levy an *ad valorem* tax on tangible taxable property within that district. The Act further requires the District to generate tax revenue to be distributed by the state to other school districts (known as "Recapture Amounts") to assist those other districts in the payment of education services delivered solely within those districts.

Under the Act, the District has levied an *ad valorem* tax of 32 mills for 1992-93 school year, 33 mills for the 1993-94 school year and 35 mills for the 1994-95 school year. The Recapture Amounts from these mill levies form the basis of Petitioners' unconstitutional taking claim. The last three years' revenues, operating budgets and Recapture Amounts of the District are:

School Year	Revenue	Operating Budget	Recapture Amounts
1992-93	$10,626,662	$ 4,812,439	$ 5,814,223
1993-94	$17,351,910	$ 4,887,361	$12,464,549
1994-95	$18,983,358	$ 5,058,360	$13,924,998
TOTAL	$46,961,860	$14,758,160	$32,203,700

2) Federal Questions Raised from Inception of Case

The Petitioners raised the federal questions presented herein at the inception of this case in September, 1992. In May 1993, the Petitioners sought to enjoin payment of the Recapture Amounts due June 1, 1993. After a hearing, the trial court concluded the Recapture Amounts, as applied to Petitioners, did not violate the Fifth and Fourteenth Amendments of the U.S. Constitution. App. 249 through App. 262.

Prior to trial, the parties agreed to incorporate the evidence from the preliminary injunctive hearing into the trial and to supplement such evidence and testimony as was necessary. After trial the court ruled that (i) the Recapture Amounts paid by the Petitioners did not violate the Petitioners' Fifth and Fourteenth Amendment rights, App. 226 through 233, and (ii) the Act did not violate the one-person, one-vote guarantee of the Fourteenth Amendment, App. 164 through App. 165. These rulings were affirmed by the Kansas Supreme Court, App. 62 through App. 66, and, App. 69 respectively.

REASONS FOR ALLOWANCE OF THE WRIT

1) Unlawful Taking

Two decisions of this Court address a local unit of government's *ad valorem* tax levy constituting an unconstitutional taking of property because the tax is in substantial excess of the services, or benefits delivered to the owners of the property taxed. The opinion of the Kansas Supreme Court is contrary to the decisions of this Court in *Norwood v. Baker*, 172 U.S. 269 (1898), and *Myles Salt Co. v. Iberia Drainage Dist.*, 239 U.S. 478 (1916).[2]

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[2] When addressing Kansas policy which conflicts either with federal constitutional guarantees or exclusive federal jurisdiction, the Kansas Supreme Court has had occasion to give deference to state policy. *Barker v. Kansas*, 503 U.S. 594 (1992) [State taxation of military retiree pay and not state and local retirees inconsistent with 4 U.S.C. § 111 and *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803 (1989) (rev'g. *Barker v. State*, 249 Kan. 186, 815 P.2d 46 (1991)]; *A Quantity of Copies of Books v. Kansas*, 378 U.S. 205 (1964) [unlawful seizure of alleged obscene books, rev'g. *State v. A Quantity of Copies of Books*, 191 Kan. 13, 379 P.2d 254 (1963)]; *Northern Gas Co. v. Kansas Comm'n*, 372 U.S. 84 *reh denied* 372 U.S. 960 (1963) [State Corporation Commission orders invade exclusive federal jurisdiction of Natural Gas Act, rev'g. *Northern Natural Gas Co. v. State Corporation Commission*, 188 Kan. 355, 362 P.2d 599 (1961) *reh denied* 188 Kan. 624, 364 P.2d 668 (1961)]; *Fed. Land Bank v. Kiowa County*, 368 U.S. 146 (1961) [state law which taxed oil and gas lease, a portion of which belonged to federal land bank, violated 12 U.S.C. § 931, rev'g. *Federal Land Bank v. Board of County Commissioners*, 187 Kan. 148, 354 P.2d 679 (1960)]; *U.S. v. John Hancock Mut. Ins. Co.*, 364 U.S. 301 (1960) [state redemption statute conflicts with 28 U.S.C. § 2410(a)(c), rev'g. Kansas Supreme Court decision barring United State's action under 28 U.S.C. § 2410(a)(c) in *John Hancock Mut. Life Co. v. Hetzel*, 185 Kan. 274, 341 P.2d 1002 (1959)]; *Chauffeurs, Teamsters & Helpers Local Union 795, et al. v. Newell*,

The tax imposed by Kan. Stat. Ann. § 72-6431 is levied by each of the 304 school district boards on all of the tangible taxable property in every school district in the State of Kansas. The local revenue derived, funds the *general* operating budgets of only 10 of the 304 Kansas school districts. These 10 school districts, in turn, pay Recapture Amounts which assist in funding the operating budgets of the other 294 school districts. Petitioner's Recapture Amount is so excessive it constitutes an unlawful taking of property under the guise of taxation.[3]

Norwood v. Baker, 172 U.S. 269 (1898) addressed the condemnation of property for a public street improvement and the taxation (assessment) of that cost to the property owner directly benefitted. In *Norwood* the taxpayer was taxed (assessed) the cost of condemning her land for a public street. The Petitioners' issue here

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356 U.S. 341 (1958) [per curiam memorandum decision, rev'g. *Newell v. Local Union 795*, 181 Kan. 898, 317 P.2d 817 (1957)]; *Walker v. Hutchinson City*, 352 U.S. 112 (1956) [Kansas publication procedure governing notice of hearing of condemnation proceeding and opportunity of land owner to be heard constitutionally deficient, rev'g. *Walker v. City of Hutchinson*, 178 Kan. 263, 284 P.2d 1073 (1955)].

[3] In 1993, the Petitioner's Recapture Amount was 1.2082 times more than District's cost of delivering educational service. By 1995, it had grown to 2.7529 times more. (*i.e.*, $13,924,998 ÷ $5,058,360). The Trial Court noted that the Recapture Amount for 1993 was 0.00584% of the total amount of state aid available to those 294 school districts, App. 253.

concerns the following principle enunciated by this Court in the *Norwood v. Baker* case:

> "In our judgment, the exaction from the owner of private property of the cost of a public improvement in substantial excess of the special benefits accruing to him is, *to the extent of such excess*, a taking, under the guise of taxation, of private property for public use without compensation. We say 'substantial excess,' because exact equality of taxation is not always attainable, and for that reason the excess of cost over special benefits, unless it be of a material character, ought not to be regarded by a court of equity when its aid is invoked to restrain the enforcement of a special assessment." 172 U.S. at 279.

All Kansas taxpayers, including Petitioners, had their income, sales and compensating use tax rates raised by the Act to help fund public education in Kansas, App. 108 through App. 109. The Petitioners have also had their *ad valorem* levy almost quadrupled in three years, App. 126 through App. 130. The increased mill levies resulted in the payment of property taxes over a three year period of $46,961,860; yet during the same three year period only $14,758,160 of their tax revenue was spent on educational benefits in the District where the taxes were collected. This excess tax revenue of $32,203,700, the Recapture Amounts, is paid to the state for distribution to other school districts. In summary, District taxpayer property taxes have increased by 383.77% over this period; yet of these taxes collected from the District, only 31.43% has been spent in the District. Such payment constitutes an unlawful taking. *Norwood v. Baker; Myles Salt Co. v. Iberia Drainage Dist.*, 239 U.S. 478 (1916).

Myles Salt Co. v. Iberia Drainage Dist. addressed the unlawful taxation of the owners of real property not subject to drainage needs. This Court in *Myles* stated:

> "It is to be remembered that a drainage district has the special purpose of the improvement of particular property, and when it is so formed to include property which is not and cannot be benefitted directly or indirectly, including it only that it may pay for the benefit to other property, there is an abuse of power and an act of confiscation." 239 U.S. at 485.

Local school boards are elected by state constitutional guarantee for the special purpose of providing for the education of the children of the district. Article 6, § 5, Kansas Constitution. Petitioners have no quarrel with the levy of a *reasonable* tax to assist the education of other district's children. However, the *ad valorem* tax of Kan. Stat. Ann. § 72-6431, as applied to the Petitioners, is excessive and in conflict with this Court's statements in *Norwood v. Baker* and *Myles Salt Co. v. Iberia Drainage Dist.*

2) One-Person, One-Vote

The Fourteenth Amendment's equal protection clause guarantees that every person casting a ballot for a government official who exercises legislative functions will have a vote equal to one, no more, no less. *Reynolds v. Sims*, 377

U.S. 533 (1964); *Maryland Committee v. Tawes*, 377 U.S. 656 (1964); *Roman v. Sincock*, 377 U.S. 695 (1964); *Lucas v. Colorado Gen. Assembly*, 377 U.S. 713 (1964); *Davis v. Mann*, 377 U.S. 678 (1964); *Avery v. Midland County*, 390 U.S. 474 (1968); *Hadley v. Junior College District*, 397 U.S. 50 (1970); and *NYC Board of Estimates v. Morris*, 489 U.S. 688 (1989).

Article 6, § 5 of the Kansas Constitution guarantees that the local public schools shall be maintained, developed and operated by locally elected boards. These boards exercise legislative functions by raising and spending tax-based revenues, hiring qualified staff, being responsible for ensuring schools are fully accredited, etc., *Avery v. Midland County*. Before the Act, the Petitioner's board, within certain statutory limits, was free to determine how much money to raise and spend on the delivery of educational benefits within the District. Under the Act, the Legislature has unduly interfered with the right of the Petitioners' school board to perform meaningful governmental functions regarding the delivery of public educational benefits.

The District consists of a geographical area of 147 square miles with 1844 electorate. School districts from urban areas with less geographic area have substantially more electorate. These urban school districts have a disproportionate influence on the legislature. This disproportionate influence is what resulted in passage of the Act. The Act, in turn, has interferred with Petitioner's school board exercising legislative functions. This Court stated in *Avery v. Midland County*:

> "And, not infrequently, the delegation of power to local units is contained in constitutional provisions for local home rule which are immune from legislative interference" 390 U.S. at 481.

This Court, in *Avery* and *NYC Board of Estimates*, set forth the proposition that local units of government exercising legislative functions must be apportioned as equally as possible so that, regardless of the form of that local unit, one segment of the population cannot effectively dilute another segment's vote. The Act dictates how the local school boards are to exercise their most important function, *i.e.*, determine the amount of revenue needed, how to raise it, and how to spend it. This function must be performed by the local school board with guidance, but without interference, from the state legislature. *Avery*.

CONCLUSION

The questions presented for review are unique to this Court and of importance to most state and local units of government. At what point does *ad valorem* tax revenue derived from a local unit of government but used to subsidize educational benefits in other local units of government constitute an unlawful taking? When does interference by a state legislature with a state constitutionally guaranteed locally elected board result in the dilution of the local electorate's one-person, one-vote guarantee? The decision of the Kansas Supreme Court conflicts with the

rationale of prior decisions of this Court on these questions. The questions presented are proper for review by this Court.

Respectfully submitted,

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IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 70,931

(92-CV-1099)
UNIFIED SCHOOL DISTRICT NO. 229, *et al.*,
Appellants,

v.

THE STATE OF KANSAS, *et al.*
Appellees.

(92-CV-1202)
UNIFIED SCHOOL DISTRICT NO. 217, *et al.*,
Appellants,

v.

THE STATE OF KANSAS, *et al.*,
Appellees.

(92-CV-1175)
UNIFIED SCHOOL DISTRICT NO. 244, *et al.*,
Appellants,

v.

THE STATE OF KANSAS, *et al.*,
Appellees.

(92-CV-2406)
UNIFIED SCHOOL DISTRICT NO. 373, *et al.*,
Appellees,

v.

THE STATE OF KANSAS, *et al.*,
Appellants.

SYLLABUS BY THE COURT

1.

A school district created by the legislature has no inherent power of taxation. It must look to the legislature for its right to raise funds by taxation and has only such power to levy, assess, and collect taxes or otherwise receive public funds as is clearly granted by the legislature.

2.

A local school board's duties under § 5 of Article 6 of the Kansas Constitution are not self-executing but are dependent upon statutory enactments of the legislature.

3.

The respective duties and obligations vested in local school boards and the legislature by Article 6 of the Kansas Constitution must be read together and harmonized so both entities may carry out their respective obligations.

4.

The judiciary interprets, explains, and applies the law to controversies concerning rights, wrongs, duties, and obligations arising under the law and has had imposed upon it the obligations of interpreting the Constitution and of safeguarding the basic rights reserved thereby to the people. In this sphere of responsibility, courts have no power to overturn the law enacted by the

legislature within constitutional limitations, even though the law may be unwise, impolitic, or unjust. The remedy in such a case lies with the people through the political process.

5.

The School District Finance and Quality Performance Act is examined and held not to be violative of the duties imposed upon local school boards and the legislature by §§ 5 and 6, respectively, of Article 6 of the Kansas Constitution.

6.

The three standards of review applicable where legislation is claimed to be violative of the equal protection provisions of the United States and Kansas Constitutions (rational basis, heightened scrutiny, and strict scrutiny) are stated and discussed.

7.

The rational basis test is held appropriate to challenges made to the School District Finance and Quality Performance Act on state and federal equal protection grounds, the test is applied, and the legislation is held not to be constitutionally impermissible.

8.

Article 2, § 16 of the Kansas Constitution should not be construed narrowly or technically to invalidate proper

and needful legislation, and where the subject of the legislation is germane to other provisions, the legislation is not objectionable as containing more than one subject or as containing matters not expressed in its title. This provision is violated only where an act of legislation embraces two or more dissimilar and discordant subjects that cannot reasonably be considered as having any legitimate connection with or relationship to each other.

9.

The School District Finance and Quality Performance Act is held not to be violative of Article 2, § 16 of the Kansas Constitution requiring that all legislative bills contain a single subject.

10.

The "recapture" provisions of the School District Finance and Quality Performance Act are held not to be a "taking" violative of the Fifth Amendment of the United States Constitution and §§ 1 and 2 of the Kansas Constitution Bill of Rights.

11.

Article 2, § 17 of the Kansas Constitution, which provides that all laws of a general nature shall have a uniform operation throughout the state, requires that all laws of a general nature which affect the people of this state generally must operate with geographical uniformity. Constitutional challenges based upon a denial of

equal protection of the laws not involving a claim of lack of geographical uniformity do not violate Article 2, § 17.

12.

The School District Finance and Quality Performance Act is held not to be violative of the uniform operation requirements of Article 2, § 17 of the Kansas Constitution.

13.

The School District Finance and Quality Performance Act is held to be within all asserted constitutional limitations and, accordingly, is constitutionally permissible legislation.

Appeal from Shawnee district court, MARLA J. LUCKERT, judge. Opinion filed December 2, 1994. Affirmed in part, reversed in part, and remanded with directions.

John L. Vratil, of Lathrop & Norquist, L.C., of Overland Park, argued the cause and *Patrick J. Gregory*, of the same firm, was with him on the brief for appellants Unified School District No. 229, *et al.*

Alan E. Popkin, of Husch & Eppenberger, of St. Louis, Missouri, argued the cause, and *Harry B. Wilson*, *Daniel N. Bloom*, and *Karen Halbrook*, of the same firm, were with him on the brief for appellants Unified School District No. 217, *et al.*

Robert J. Perry, of Perry, Hamill & Fillmore, L.C., of Overland Park, argued the cause, and *Thomas A. Hamill* and *Gregory M. Dennis*, of the same firm, and *Bryan K. Joy*,

of Burlington, were with him on the brief for appellants Unified School District No. 244, *et al.*

Carl L. Gallagher, assistant attorney general, argued the cause, and *Robert T. Stephan,* attorney general, was with him on the briefs for appellant State of Kansas.

Alan L. Rupe, of Rupe & Girard Law Offices, P.A., of Wichita, argued the cause, and *Steven J. Rupp,* of the same firm, and *John S. Robb,* of Somers, Robb & Robb, of Newton, were with him on the brief for appellees Unified School District No. 373, *et al.*

Dan Biles, of Gates & Clyde, Chartered, of Overland Park, argued the cause, and *Rodney J. Bieker,* of the Kansas State Department of Education, was on the brief for appellee Kansas State Board of Education.

The opinion of the court was delivered by

McFARLAND, J.: In these four consolidated actions, 97 plaintiffs, including unified school districts, taxpayers, and students, challenge the constitutionality of the School District Finance and Quality Performance Act. The 1992 legislature enacted Senate Substitute for H.B. 2892 (L. 1992, ch. 280). This massive bill contains 69 sections, although only the first 36 sections thereof are designated as the School District Finance and Quality Performance Act. The bulk of the Act is codified at K.S.A. 72-6405 *et seq.*, although some of the first 36 sections and the undesignated remaining 33 sections are, in codification, widely scattered in the Kansas Statutes. For our purposes, unless otherwise noted, we will refer to L. 1992, ch. 280 as the Act, which also encompasses subsequent legislative amendments thereto.

The district court upheld the Act against challenges that it was constitutionally impermissible as being violative of:

1. Article 6, § 5 of the Kansas Constitution by infringing upon the authority granted to locally elected school boards to maintain, develop, and operate local public schools;

2. Article 6, § 6(b) of the Kansas Constitution in that it does not contain "suitable provision for finance of the educational interests of the state";

3. Section 1 of the Bill of Rights of the Kansas Constitution concerning equal protection (except for the low enrollment weighting factor);

4. Article 2, § 16 of the Kansas Constitution as containing more than one subject;

5. The Fifth and Fourteenth Amendments to the United States Constitution and §§ 1 and 2 of the Bill of Rights of the Kansas Constitution on the claim that recapture funds provisions of K.S.A. 72-6431(d) constitute an excessive "taking" of property; and

6. Article 2, § 17 of the Kansas Constitution as a law of a general nature which does not operate uniformly throughout the state.

As to the low enrollment weighting factor, the district court held:

The record did not "contain a rational basis grounded upon education theory for distinguishing" between districts containing more than 1,899 students and those having fewer students; the low enrollment provision could

not be severed from the Act; and the Act was, accordingly, unconstitutional.

Each of the foregoing holdings of the district court is an issue before us via interlocutory appeal or cross-appeal. Additionally, the district court held that a provision of the Act that set the school districts' mill levy for a period in excess of two years was constitutionally impermissible but was severable. However, that infirmity has been corrected by the 1994 legislature and is not before us.

The Act is, arguably, the most significant single piece of legislation ever enacted by the Kansas Legislature in terms of the amount of tax dollars involved and its impact on the citizens of Kansas. The Act represents a major policy shift in how public school education is viewed and how it is to be funded. That the magnitude of the change contained in the Act has generated such a firestorm of protest in a number of areas of the State is not surprising. The Act has been through the legislative process, was amended in many respects on its way to enactment, and became the law of this state. The consolidated actions herein are challenges to the constitutionality of the legislation. Accordingly, the judiciary's role is very limited in its scope. The wisdom or desirability of the legislation is not before us. The constitutional challenge goes only to testing the legislature's power to enact the legislation.

In *U.S.D. No. 380 v. McMillen*, 252 Kan. 451, 845 P.2d 676 (1993), constitutional challenges were asserted, as in

the case before us, that certain legislation violated provisions of Article 6 of the Kansas Constitution. In discussing the court's limited role in such matters, we stated:

> "In considering the constitutionality of a statute duly enacted by the legislature, certain basic principles and rules apply.
>
> 'When a statute is attacked as unconstitutional a presumption of constitutionality exists and the statute must be allowed to stand unless it is shown to violate a clear constitutional inhibition. *Shawnee Hills Mobile Homes, Inc. v. Rural Water District,* 217 Kan. 421, 435, 537 P.2d 210 (1975). It is generally agreed that the Kansas Constitution limits rather than confers power and any power and authority not limited by the constitution remains with the people and their legislators. In *Leek v. Theis,* 217 Kan. 784, 800, 539 P.2d 304 (1975), this concept was stated as follows:
>
> > "When an act of a state legislature is assailed as void, it is only necessary to look to the federal and state constitutions for a specific restriction on that power. Thus an act of a state legislature on a rightful subject of legislation, is valid unless prohibited by the federal or state constitution. . . . "
>
> 'This court need not attempt to search out constitutional authority for enacting a challenged statute, but rather must determine if the legislation so clearly violates a constitutional prohibition as to place it beyond legislative authority. *Unified School District No. 255 v. Unified School District No. 254,* 204 Kan. 282, Syl. ¶ 2, 463 P.2d 499 (1969); *NEA-Fort Scott v. U.S.D. No. 234,* 225 Kan. 607, 608-09, 592 P.2d 463 (1979).

> In *Bair v. Peck*, 248 Kan. 824, Syl. ¶ 1, 811 P.2d 1176 (1991), we held:
>
> 'The constitutionality of a statute is presumed, and all doubts must be resolved in favor of its validity. Before a statute may be stricken down, it must clearly appear the statute violates the Constitution. Moreover, it is the court's duty to uphold the statute under attack, if possible, rather than defeat it, and, if there is any reasonable way to construe the statute as constitutionally valid, that should be done.'
>
> Furthermore, '[a] statute will not be declared unconstitutional unless its infringement on the superior law of the constitution is clear beyond substantial doubt.' *Samsel v. Wheeler Transport Services, Inc.*, 246 Kan. 336, Syl. ¶ 3, 789 P.2d 541 (1990)." 252 Kan. at 457-58.

In *McMillen*, the trial court had agreed with the school district's position that the subject legislation infringed upon vesting of the power in Article 6, § 5 to maintain, develop, and operate local public schools in locally elected boards. In upholding the legislation, we stated:

> "The position of the trial court and the school district is one that has considerable support, arguably makes sense, and certainly appeals to several, if not all, of the members of this court. However, if a legislative enactment is constitutional, it is not for this court to set policy or to substitute its opinion for that of the legislature no matter how strongly individual members of the court may personally feel on the issue.

"The duty of an appellate court in considering a constitutional attack upon a legislative enactment was stated in *Harris v. Shanahan*, 192 Kan. 183, 206-07, 387 P.2d 771 (1963), as follows:

'It is sometimes said that courts assume a power to overrule or control the action of the people's elected representative in the legislature. That is a misconception. . . . The judiciary interprets, explains and applies the law to controversies concerning rights, wrongs, duties and obligations arising under the law and has imposed upon it the obligation of interpreting the Constitution and of safeguarding the basic rights reserved thereby to the people. In this sphere of responsibility courts have no power to overturn a law enacted by the legislature within constitutional limitations, even though the law may be unwise, impolitic or unjust. The remedy in such a case lies with the people.'

See *Kansas Malpractice Victims Coalition v. Bell*, 243 Kan. 333, 341, 757 P.2d 251 (1988). In *Samsel v. Wheeler Transport Services, Inc.*, 246 Kan. at 348-49, this court stated:

'The interpretation of constitutional principles is an important responsibility for both state and federal courts. In determining whether a statute is constitutional, courts must guard against substituting their views on economic or social policy for those of the legislature. Courts are only concerned with the legislative power to enact statutes, not with the wisdom behind those enactments. When a legislative act is appropriately challenged as not conforming to a constitutional mandate, the function of the court is to lay the constitutional provision invoked beside the challenged statute and decide

> whether the latter squares with the former – that is to say, the function of the court is merely to ascertain and declare whether legislation was enacted in accordance with or in contravention of the constitution – and not to approve or condemn the underlying policy.'
>
> Thus, if the statute in question does not clearly contravene the provisions of § 5 of Article 6 of the Kansas Constitution, our duty is to uphold the statute, regardless of any personal views individual members of this court may have as to whether the statute is 'unwise, impolitic, or unjust.' " 252 Kan. at 461-62.

Before proceeding to the issues, some comments are appropriate. The actions herein have been well briefed, tried, and argued. The district court did an outstanding job in analyzing the issues and setting forth its decision and rationale. The parties and the district court are to be commended for their handling of the complex issues herein.

The district court referred to the plaintiffs in case No. 92-CV-1099 collectively as the "Blue Valley" plaintiffs; those in case No. 92-CV-1202 as the "Southwestern plaintiffs"; those in case No. 92-CV-1175 as the "Burlington plaintiffs"; and those in case No. 90-CV-2406 as the "Newton" plaintiffs. Where it is necessary to refer to the plaintiffs in one of the four cases, we shall use the same designation utilized by the district court.

In order to place the issues in perspective, considerable space in the opinion must be devoted to the evolutionary development of the law relative to public schools and their financing.

HISTORICAL PERSPECTIVE

The history of public schools in Kansas commenced well before Kansas achieved statehood. The Organic Act, an Act to Organize the Territory of Kansas § 34 (1854), and the Act for the Admission of Kansas Into the Union, § 3 (1861), included provisions providing that certain sections of land be reserved for educational purposes. A Territorial Superintendent of Common Schools certified teachers and organized local school districts within walking distance of students' homes.

When passed in 1859, the Ordinance to the Constitution contained eight sections, three of which dealt with elementary public education. The framers of the constitution devoted an entire article to the establishment and finance of a system of "common schools." Section 6 of the Ordinance provided for statewide financing of schools by earmarking five percent of all proceeds from the sale of public lands for the exclusive use of the public schools.

The original Article 6 of the Kansas Constitution was adopted by the statehood convention in July 1859, ratified by the electors of the state of Kansas on October 4, 1859, and became law upon the admission of Kansas into statehood in 1861. Section 3 of Article 6 provided for funding of public education. It stated that sale of public lands, unclaimed estates, rents on public lands, "and such other means as the Legislature may provide, *by tax or otherwise*, shall be inviolably appropriated to the support of common schools." (Emphasis supplied.)

Clearly, from its creation, the State of Kansas has financed public schools through taxes and other mechanisms provided for by the legislature, not by local

districts. The legislature, utilizing the authority granted under the constitution, gave school districts the power to levy ad valorem taxes within the district.

For most of its history, Kansas public schools were principally funded by local tax revenue generated pursuant to the powers and limitations granted by the legislature. Most of the various school finance acts imposed minimum ad valorem tax levies or floors as well as maximum levies or caps. In 1937, the first state aid provision was enacted when the legislature established minimum levels of support based upon enrollment categories. L. 1937, ch. 306. Prior thereto, less than five percent of school finances came from state aid. The nature and amounts of state aid have varied over the subsequent years, but from that point forward, state aid was always a part of the formula.

After over a century of utilization, the constitutional provisions regarding education, including school finance, came under scrutiny. Much of the impetus for the scrutiny was the unification mandated by the 1963 school unification law. L. 1963, ch. 393. The law was challenged by 148 school districts. One month after the Kansas Supreme Court rendered a preliminary decision in *Tecumseh School District v. Throckmorton*, 195 Kan. 144, 403 P.2d 102 (1965) (see 194 Kan. 519, 403 P.2d 102 [1965]), House Concurrent Resolution No. 537 was passed. L. 1965, ch. 428. The legislature directed a study to be conducted by the Kansas Legislative Council.

An 11-person citizen advisory committee was appointed to conduct research, hold hearings, make findings, and report recommendations relative to the needs of

public school systems. At the time, there was an elected State Superintendent of Public Instruction and appointed State Board of Education. The advisory committee proposed a complete revamping of this structure, noting that "members were impressed by the remarkable growth and changes in Kansas education during the past 25 years." Kansas Legislative Council, *Implementation of the Education Amendment* – Report of the Education Advisory Committee, p. vi (Publication No. 260, November 1966). As reasons for change, the committee listed: The consolidation of schools resulting in the number of school districts in Kansas being reduced from 8,624 in 1940-41 to 349 in 1966, the large growth in expenditures, and the growth in the number of Kansas school students. Seeking a structure which would allow Kansas to move into the future, the committee recommended the election of a state board of education.

In granting the State Board of Education supervisory powers, the drafters rejected a proposal for "a uniform system" operated by local boards and instead incorporated language requiring a "comprehensive system" of local public schools under the general supervision of the state board but "maintained, developed and operated by locally elected boards." Kan. Const. art. 6, § 5. The committee stated the amendments "provide constitutional guarantees of local control of local schools." Kansas Legislative Council, *The Education Amendment to the Kansas Constitution*, p. iii (Publication no. 256, December 1965). At the same time, the amendment reaffirmed the inherent powers of the legislature – and through its members, the people – to shape the general course of public education and *provide for its financing*.

Amended Article 6 as passed by the legislature and ratified by the people in 1966, provides, in relevant part:

> "§ 1. The legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools . . . which may be organized and changed in such manner as may be provided by law.
>
> "§ 2. (a) The legislature shall provide for a state board of education which shall have general supervision of public schools . . . and all the educational interests of the state, except educational functions delegated by law to the state board of regents.
>
> . . . .
>
> "§ 5. Local public schools under the general supervision of the state board of education shall be maintained, developed and operated by locally elected boards. When authorized by law, such boards may make and carry out agreements for cooperative operation and administration of educational programs under the general supervision of the state board of education, but such agreements shall be subject to limitation, change or termination by the legislature.
>
> § 6. . . .
>
> "(b) The legislature shall make suitable provision for finance of the educational interest of the state. No tuition shall be charged for attendance at any public school to pupils required by law to attend such school, except such fees or supplemental charges as may be authorized by law."

At the time of the ratification of Article 6, school finance was controlled by the State School Foundation Fund Act. L. 1965, ch. 402. This Act was the most comprehensive school finance legislation to that point in Kansas history. Fundamental to the legislation was an indexing of a geographic area's ability to fund public education. Money was then distributed commensurate with the "index" and other factors. Each county assessed a levy to finance the state aid. School districts were also empowered to levy ad valorem taxes to fund operating expenses, but were restricted from increasing the budget to no more than 104 percent of the operating expenses per pupil in the preceding school year. L. 1965, ch. 402, § 15. If a district found this inadequate, a school budget review board could authorize additional expenditures in certain specified situations, such as where there had been "unusual occurrences". The review board consisted of the state superintendent, the state controller, and the state budget director. Hence, districts did not have the ability to raise budgets beyond the statutory limits without state authorization, even if the voters of the district wished to do so. L. 1965, ch. 402, §§ 15, 16.

In 1967, the legislature authorized school boards to seek voter approval to exceed budgetary limitations. L. 1967, ch. 409, § 18. This authorization was later repealed. In 1970, the budget limitations were replaced with the so-called "school tax lid." L. 1970, ch. 402.

The School Foundation Fund Act and related school finance statutes were determined to be unconstitutional by the District Court of Johnson County in *Caldwell v. State*, case No. 50616 (Johnson County District Court, slip op. August 30, 1972). The court found that the law failed

to provide equalization aid sufficient to offset the disparity in either tax effort or per pupil operating expenditures, "thereby making the educational system of the child essentially the function of, and dependent on, the wealth of the district in which the child resides."

Responding to this decision, the legislature enacted the School District Equalization Act (SDEA) in 1973. L. 1973, ch. 292. Seeking resource equalization, SDEA distributed state aid based upon district wealth. The higher the assessed valuation and taxable income of the district, which were the measures of the district's wealth, the lower the state aid. The lower the wealth, the higher the aid. A district below the spending median was given authority to increase the district budget, upon voter approval, to the level of the median budget per pupil within the district's enrollment category or a maximum of 15 percent. L. 1973, ch. 292, § 26.

The alternative 15 percent cap was eliminated in 1978, allowing a district, upon voter approval, to raise the budget to the median budget per pupil in the same enrollment category. L. 1978, ch. 296, § 6. In 1979, the limitation was lifted entirely, and the district was allowed to increase its budget by any amount approved by the voters. L. 1979. ch. 221, § 3.

Some of these modifications were prompted by litigation. In 1975, the constitutionality of the SDEA was challenged by numerous parties, including 41 unified school districts. The District Court of Chautauqua County found the Act unconstitutional. The legislature amended the Act, but the court did not hear further evidence and dismissed the case. On appeal, the Supreme Court

reversed and remanded for further proceedings. *Knowles v. State Board of Education*, 219 Kan. 271, 547 P.2d 699 (1976). On remand, the case was transferred to the District Court of Shawnee County and the judge presiding over this division, the Honorable E. Newton Vickers, ruled the SDEA was constitutional. *Knowles v. State Board of Education*, 77CV251 (Shawnee County District Court, slip op. January 26, 1981).

The SDEA became the subject of litigation again in 1990 as several school districts and individuals, including several of the plaintiffs in this action, challenged the constitutionality of the statutes. On October 14, 1991, the Honorable Terry L. Bullock issued an opinion answering 10 questions which formed governing rules of law applicable to the challenges. *Mock v. State of Kansas*, 91CV1009 (Shawnee County District Court, slip op. October 14, 1991). The decision prompted the Governor and legislative leadership to appoint a task force to investigate legislative alternatives which would satisfy the guidelines in the decision. This task force issued a report recommending a new formula granting each district the same base state aid per pupil (BSAPP) and then allowing for certain adjustments for student needs and district size. Report of the Governor's Task Force on Public School Financing (November 2, 1991).

In 1992, the legislature repealed the SDEA and enacted the School District Finance and Quality Performance Act. L. 1992, ch. 280.

SUMMARY OF THE ACT

Under the Act, the school board of each school district in the state of Kansas must levy an ad valorem tax upon the taxable tangible property of the district at the rate of 32 mills for the 1992-93 school year, 33 mills for the 1993-94 school year, and 35 mills for the 1994-95 school year and succeeding years. K.S.A. 72-6431(a), (b). (The provision for 1994-95 and later years was held invalid by the district court herein and then legislatively corrected. L. 1994, ch. 7.) Except for portions of the tax which pay for principal and interest on redevelopment project bonds issued pursuant to K.S.A. 12-1774, the proceeds from the tax are deposited in the general fund of the district. K.S.A. 72-6431(c). On June 1 of each year, the district remits to the Kansas State Treasurer those revenues from the district's "local effort" which exceed the district's "state financial aid." K.S.A. 72-6431(d). The funds which are remitted are often referred to as "recapture" funds.

The funds from the "local effort" are comprised primarily of the ad valorem tax revenues (K.S.A. 72-6431), but may also be comprised of motor vehicle tax receipts; mineral production tax receipts; industrial revenue bonds and port authority bonds in lieu of tax payments; federal PL 874 Impact Aid (in accord with federal law and regulations) (K.S.A. 72-6430[e]); unexpended and unencumbered balances remaining in the district's general fund; unexpended and unencumbered balances remaining in a district's "program weighted" funds, *i.e.*, transportation, and bilingual and vocational education funds (except for the vocational fund of a district which operates a vocational school) (K.S.A. 72-6409[e]); and remaining proceeds

of the former general fund and transportation tax levies prior to their repeal in 1992. K.S.A. 72-6410(e).

The district's "state financial aid" is determined by a formula of the legislatively-designated BSAPP multiplied by the district's adjusted or weighted enrollment. K.S.A. 72-6410(b)(1). The BSAPP was set at $3,600. K.S.A. 72-6410(d). The adjusted or weighted enrollment is based upon the district's full time enrollment adjusted by weighting factors which account for specified student populations to whom higher costs are associated: bilingual education students, vocational education students, at-risk students, students in low enrollment districts, students in new facilities, and students who are transported.

School districts qualify for the bilingual education weighting when their students are in a bilingual class in which bilingual services are offered through an approved program. The approved programs provide substantive instruction in core classes (math, science, social studies, and others) in the student's native language while also teaching English. The goal is to accommodate the student's transition to English-only classes. The weighting arises from the additional staffing demands of operating the program. In the formula, the bilingual education weighting is determined by multiplying the full time equivalent (FTE) enrollment in bilingual education programs approved by the State Board of Education by a factor of 0.2. K.S.A. 72-6413(a). By measuring FTE enrollment, a weighting is not provided for those portions of the day in which the student is taking English-only classes.

The vocational education weighting is only available for students enrolled in vocational education programs which are approved by the State Board of Education. The formula utilizes FTE enrollment, thus compensating for only those portions of the day in which the student is participating in the approved program. The FTE enrollment is multiplied by 0.5, which is the statutory weighting factor. K.S.A. 72-6413(b).

The weighting factor for at-risk students is 0.05. K.S.A. 72-6414. This factor is multiplied by the number of students qualifying for free or reduced meals under the national school lunch program. To receive the funds, the district must maintain an at-risk assistance plan approved by the State Board of Education. K.S.A. 72-6407(c).

Low enrollment weighting is available in districts with a regular enrollment (defined in K.S.A. 72-6407[d]) of under 1,900. K.S.A. 72-6412. During the 1992-93 school year, 261 school districts were under this level. Of the various weighting factors, the low enrollment weighting is the most significant, accounting for approximately 11 percent of the total general operating budgets adopted by all school districts in the state.

The amount of low enrollment weighting received depends upon whether the district has an enrollment of under 100 pupils, between 100 and 299, or between 300 and 1,899. K.S.A. 72-6412. As opposed to the other weighting factors, no specific weight is specified in the statute. Rather, formulas codified at K.S.A. 72-6412(e), (f), and (g) determine the weighting to be afforded.

The new facility weighting is based upon the number of pupils in a district attending a new facility (a term not

defined) multiplied by 0.25. K.S.A. 72-6415(a). This weighting is only available during the first two years of operation of a new facility and is available only to those districts which have adopted a local option budget and have budgeted the total amount authorized for the school year. K.S.A. 72-6407(i).

The final weighting factor, transportation, is determined by a formula codified at K.S.A. 72-6411. The weighting is available for pupils who reside 2.5. miles or more from school. In general, the weighting is based on cost and density factors associated with the number of pupils transported and the number of pupils per square mile. The computation relies upon utilization of the statistical method of the "curve of best fit," with the purpose of accounting for the varying costs of per pupil transportation in areas populated at different densities.

Once each of the weighting factors is determined for a district, those amounts are added to the $3,600 BSAPP multiplied by the enrollment. This is the amount available to the district unless a district was affected by the cap imposed by the "transitional state financial aid" provision of K.S.A. 72-6410(c) or unless the district adopted a local option budget.

The transitional state financial aid cap applied in the 1992-93 school year only. The cap restricted increases in each school district's operating budget to no more than 10 percent, plus enrollment growth, over the 1991-92 adjusted operating budget. The limitation applied regardless of whether the budget increase was from state financial aid or a combination of state financial aid and the local option budget. K.S.A. 72-6411(c).

School districts may adopt a local option budget in an amount which in no situation can exceed 25 percent of a district's state financial aid. A formula in the statute reduces the 25 percent figure by the same percentage as the percentage increase of any legislatively enacted increases in the BSAPP. K.S.A. 72-6433. Because of the cap imposed through the transitional state financial aid provision, some districts could not utilize the local option budget provisions or, at least, the full 25 percent allowed. Hence, in 1992-93, only 231 school districts were eligible to use the local option budget provisions. The local option budget provisions are triggered when and if the local school board determines the amount budgeted is insufficient and the adoption of a local option budget would be in the best interests of the district. K.S.A. 72-6433(b)(1).

Beginning in the 1993-94 school year, the district's adoption of a local option budget is subject to a protest petition and election if five percent of the electors in a district sign a protest petition within 30 days of the publication of the school board's resolution. If protested, the board must notify the county election officer within 30 days of the filing of the protest petition that an election is requested. If the board fails to do so, the local option budget is deemed abandoned, and the board cannot publish a local option budget resolution for nine months. K.S.A. 72-6433(b)(1).

The school board may adopt a local option budget for a period of up to four years in any amount up to the maximum allowed under the statute. The board need not, however, utilize the full amount of the local option budget authorized by the resolution. If less than the full

amount is authorized, during the period of a resolution, the board may pass another resolution to increase the amount of the local option budget, following the same procedure as with the original resolution. The new resolution expires at the same time as the first resolution would have expired. K.S.A. 72-6433(2).

To fund the local option budget, the school district may levy local property taxes. K.S.A. 72-6435. In addition, a district may receive supplemental general state aid if the district's "assessed valuation per pupil" is at or below the 75th percentile of the assessed valuation per pupil statewide for the prior year. The supplemental general state aid is based upon an equalization methodology known as a "guaranteed tax base". A district under the 75th percentile of the assessed valuation per pupil statewide for the prior year receives supplemental general state aid in the proportion of the district's assessed valuation per pupil for the prior year to the 75th percentile of assessed valuation per pupil statewide for the prior year. K.S.A. 72-6434.

In order to accomplish the mission of Kansas education (K.S.A. 72-6439), the Act also contains provisions mandating the adoption of a Quality Performance Accreditation (QPA) system for Kansas schools. Section 35 of the Act, codified at K.S.A. 72-6439, requires the State Board of Education to design an accreditation system "based upon goals for schools which will be framed in measurable terms." Ten outcomes are specified in the statute. K.S.A. 72-6439.

As part of the effort to achieve these outcomes, each district with more than one school site is required to have

a school site council composed of the principal and representatives of teachers, school personnel, parents of students, the business community, and other community groups. The school site council is responsible for providing advice and counsel in (1) evaluating state, school district, and school site performance goals and objectives and (2) determining how the school will meet those goals and objectives. K.S.A. 72-6439(c)(1). The requirement of maintaining school site councils expires on June 30, 1996 unless extended by the legislature during the 1996 session. K.S.A. 72-6439(c)(3).

The QPA provisions are phased in so that all schools must participate by the 1995-96 school year. K.S.A. 72-6439(e).

The Act also imposes several other school reforms. All school districts were required to provide two days of in-service training for their personnel in 1992-93 and three days in 1993-94. K.S.A. 72-6439(g).

K.S.A. 72-1106 extends the school year in a number of respects not pertinent to the issues herein.

The Act further established a 16-member Committee on School District Finance and Quality Performance. The Committee was comprised of the chairs and ranking minority members of the House Education, Appropriation, and Taxation Committees and of the Senate Education, Ways and Means, and Assessment and Taxation Committees. Two additional members were appointed by the Governor to serve at her pleasure and two were appointed by the State Board of Education to serve at the board's pleasure. K.S.A. 72-64a01(a).

The Committee had the duty to monitor many of the issues raised in this litigation. The Committee shall:

1. monitor implementation and operation of the Act;
2. evaluate the fairness and equity of the costs and weightings;
3. determine whether there should be additional weightings;
4. evaluate the Act's impact upon local control;
5. determine whether the Act furthers the mission of Kansas education;
6. evaluate the educational reform segments of the Act;
7. review other states' systems of finance;
8. review the $3,600 figure for sufficiency in providing "quality educational opportunities";
9. determine mechanisms for decreasing local option budget authority when base state aid or weightings increase;
10. explore alternative funding sources;
11. evaluate criteria for categorical state aid and whether entitlement formulas are equitable; and
12. make an annual report to the legislature, Governor, and State Board of Education. K.S.A. 72-64a02(a).

The sunset date for this committee was June 30, 1994. K.S.A. 72-64a02(c).

Beginning at L. 1992, ch. 280, § 55 are 10 sections which amend the Kansas Tax Code. Amendments to K.S.A. 79-32,110, 72-32,119, and 72-32,120 changed the tax rates and allowable deductions for income tax computation. L. 1992, ch. 280, §§ 55, 56, and 57. Sections 58, 59, and 60 amended the retailers' sales tax provisions, changing the rate and the items to which the tax applies. Section 61 of the Act increased the rate of the compensating use tax to the same rate as the sales tax, 4.9 percent. The mechanics of the function of the local ad valorem tax reduction fund were amended by § 62 of the Act. Section 63 amended dates and rates of credit in the county and city revenue sharing fund. Section 64 affected transfers from the state general fund of certain sales tax proceeds to the state highway fund. Finally, § 65 dealt with the effective dates of some of these provisions.

The Act details the expenditures of portions of the proceeds of these taxes. Under K.S.A. 72-6438, on January 15, March 15, and June 15 of each year, the director of accounts and reports must transfer from the state general fund to the state school district finance fund all revenue attributable to the operation of provisions of K.S.A. 79-32,110 (imposition of income tax), K.S.A. 79-3602, K.S.A. 79-3603, and K.S.A. 79-3606 (retailers' sales tax definitions, imposition of tax, and exemptions) and K.S.A. 79-3703 (imposition of compensating use tax).

The state school district finance fund may only be used for purposes of financing school districts and for no other governmental purposes. K.S.A. 72-6438(c). The monies in the fund are distributed as general state aid as provided for under the Act. K.S.A. 72-6438(d).

The Act also contains a provision regarding severability. K.S.A. 72-6440(a) states:

> "If any clause, paragraph, subsection or section of the school district finance and quality performance act shall be held invalid or unconstitutional, it shall be conclusively presumed that the legislature would have enacted the remainder of the act without such invalid or unconstitutional clause, paragraph, subsection or section."

The 1993 legislature amended the Act in several respects, four of which are particularly pertinent to the issues in this suit.

First, the 1993 amendments added a declining enrollment provision to assist school districts which have a drop in enrollment when the enrollment in the current school year has decreased from the preceding school year. Under the amendment, a district may add to its enrollment for the current school year one-half of the number of pupils by which the enrollment in the current school year has decreased from the enrollment in the preceding school year. No adjustment may be made for deceases [sic] exceeding four percent of the enrollment in the preceding school year. L. 1993, ch. 264, § 8.

Second, the amendments added a mechanism by which school districts could apply to the State Board of Tax Appeals for additional taxing authority to offset start-up costs associated with opening new school facilities not otherwise covered by the new facilities weighting. L. 1993, ch. 264, § 14.

Third, the 1993 legislation changed the Act to require an adjustment to the BSAPP in the event appropriations in any school year for general state aid are not sufficient to pay a school district's computed entitlement. L. 1993, ch. 264, § 11.

Finally, the amendments adopted a concurrent resolution reconfirming support of school accreditation through QPA, but urging the State Board of Education to consider certain modifications to the QPA system as specified in the resolution. L. 1993, ch. 294.

The district court traced the legislative history of the Act and concluded the legislature had four major goals in enacting the legislation: "(1) more equitable funds for students regardless of district wealth; (2) more equitable property taxes from district to district; (3) increased funding for education; and (4) increased accountability and measurements to assess the outcomes resulting from the funding, *i.e.*, measures to improve schools and accreditation." This determination is supported by the record, and it can hardly be argued these are not legitimate legislative goals.

We turn now to the specific issues on appeal.

INFRINGEMENT OF LOCAL SCHOOL BOARDS' AUTHORITY UNDER ARTICLE 6, § 5.

Article 6, § 5 of the Kansas Constitution provides:

> "Local public schools under the general supervision of the state board of education shall be maintained, developed, and operated by locally elected boards. When authorized by law,

> such boards may make and carry out agreements for cooperative operation and administration of educational programs under the general supervision of the state board of education, but such agreements shall be subject to limitation, change or termination by the legislature."

It is argued that the Act is violative of Article 6 in that the imposition of the statewide tax levy, the restriction on the local option budget, and the diminution of each school district's budget authority impermissibly infringes on the local control provision. Fiscal control is argued to be an integral part of "local control." We do not agree.

Article 6, § 6(b) provides in pertinent part:

> "(b) *The legislature shall make suitable provision for finance of the educational interests of the state.* No tuition shall be charged for attendance at any public school to pupils required by law to attend such school, except such fees or supplemental charges as may be authorized by law." (Emphasis supplied.)

The proponents of the claims made in this issue would, in effect, rewrite §§ 5 and 6 to require the State to provide direct financial aid or the means to raise tax monies sufficient to cover what each school district determines is "suitable financing" for the particular district's needs. Under this rationale, the legislature would have little or no role in the determination of what amount of finance was suitable for a particular district.

In *Chicago, R. I. & P. Rly. Co. v. Nichols,* 130 Kan. 509, 512, 287 Pac. 262 (1930), this court stated:

> "Since the constitution places the responsibility for providing a system of education upon the legislature, it logically follows that a school district created by the legislature has no inherent power of taxation. It must look to the legislature for its rights to raise funds by taxation, and has only such power to levy, assess and collect taxes as is clearly granted by the legislature."

Although *Nichols* predates our present constitution, its holding is equally applicable today. Article 6, § 1 places the responsibility of establishing and maintaining a public school system on the State. Kansas school districts have no inherent power of taxation and never have had. They have always been funded through legislation. Far from supporting the proponents' arguments herein, the 1966 amendment of Article 6, § 6 specifically placed the "suitable financing" responsibility with the legislature. L. 1966, ch. 10.

Article 6, §§ 1 and 2 are pertinent to this discussion and provide:

> "§ 1. The legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools, educational institutions and related activities which may be organized and changed in such manner as may be provided by law.
>
> "§ 2. (a) The legislature shall provide for a state board of education which shall have general supervision of public schools, educational institutions and all the educational interests of the state, except educational functions delegated by law to the state board of regents. The state

> board of education shall perform such other duties as may be provided by law."

In *U.S.D. No. 380 v. McMillen*, 252 Kan. 451, 845 P.2d 676 (1993), at issue was the apparent conflict between Article 6, §§ 1 and 5. The former places responsibility for maintaining public schools with the legislature, while the latter places it with the locally elected school boards. The challenged statute (K.S.A. 72-5443) provides for a hearing panel to make a final decision on the firing of a teacher, subject to judicial review. In upholding the statute, we said:

> "It appears clear that the legislature under § 1 of Article 6 has the broad duty of establishing the public school system. The local school board's duties under § 5 of Article 6 are not self-executing but are dependent upon statutory enactments of the legislature. However, we do not imply that the legislature has carte blanche over the duties and actions of local school boards. The respective duties and obligations vested in the legislature and the local school boards by the Kansas Constitution must be read together and harmonized so both entities may carry out their respective obligations. In considering the competing provisions, we do not find that the statute in question is so unreasonable that it unduly interferes with or hamstrings the local school board in performing its constitutional duty to maintain, develop, and operate the local public school system.
>
> "When viewed as this court must, under the presumption of constitutionality and with all doubts resolved in favor of the statute's validity, it cannot be said K.S.A. 1991 Supp. 72-5443 'infringes beyond substantial doubt' upon § 5 of

> Article 6 of the Kansas Constitution. See *Bair v. Peck*, 248 Kan. 824, 811 P.2d 1176 (1991); *Samsel v. Wheeler Transport Services, Inc.*, 246 Kan. 336, 789 P.2d 541 (1990)." 252 Kan. at 464.

The argument is also made herein that a school board's duties under § 5 of Article 6 are self-executing. *McMillen* specifically held they were not and is controlling herein.

The proponents on this issue cite decisions from other jurisdictions which have held fiscal control inherent in a school board's local control over its district. As the district court appropriately noted, none of these decisions involved constitutional provisions comparable to those in Article 6 and, accordingly, are not persuasive.

Utilizing the appropriate judicial review standards previously enunciated, we conclude, as did the district court, that the Act does not violate Article 6, § 5 of the Kansas Constitution in the asserted particulars. The legislature, in exercising its power to finance public schools, did not unduly impede the power of locally elected boards to establish, operate, and maintain schools.

WHETHER THE ACT MAKES SUITABLE PROVISION FOR FINANCE UNDER ARTICLE 6, § 6(b)

One of the difficulties inherent in discussing the constitutional challenges to the Act is that some of the specific claims are so interrelated that it is virtually impossible to focus on them individually, but the alternative, consideration *en masse*, is so unwieldy as to be impractical. This second issue illustrates the problem.

Article 6, § 6(b) provides, in pertinent part: "The legislature shall make suitable provision for finance of the educational interests of the state."

In this issue, it is claimed the Act is violative of § 6(b) of Article 6 in that it fails to make the mandated "suitable provision." Much of the argument leads directly back to the first issue, that is, the financing provisions of the Act are not suitable because they infringe on the local control provisions of § 5 of Article 6, previously discussed.

In this issue, districts which have seen their funding reduced by the Act presented evidence of how they have had to reduce programs, personnel, etc., to accommodate the reduced funding. They argue the funding is not "suitable" when it results in cutting programs deemed necessary by the local boards of education. They acknowledge there is a wide disparity in per pupil spending but argue the legislature is improperly cutting off the mountain tops to fill in the valleys. There was testimony, however, that some school districts believed they had greater local control under the Act.

The district court correctly held that the issue for judicial determination was whether the Act provides suitable financing, not whether the level of finance is optimal or the best policy. The district court's analysis of this issue first considered decisions from other states and then analyzed Kansas law. The district court's rationale is as follows:

> "6. The issue for judicial determination is whether the Act satisfies this provision, not whether the level of finance is optimal or the best policy.

"A. *Decisions From Other States*

" . . . In other jurisdictions much of the recent litigation has focused upon the education clauses of the various state constitutions and charters. However, analysis of these decisions reveals that each of these decisions is necessarily controlled by the particular wording of the state's education clause and, to a lesser extent, organization and funding. Some state constitutions specifically mandate 'equality'. Others mandate 'uniformity'. Many require 'efficiency'. Some constitutions specify an explicit and significant standard such as 'high quality' or 'quality' public education. In Louisiana the standard is to provide 'excellence'. Many other states imply a lower standard such as 'thorough', 'efficient', or 'adequate'. *See* McUsic, 'The Use of Education Clauses in School Finance Reform Litigation,' 28 Harv. J. Leg. 308 (1991).

"Based upon the language of their respective state constitutions, some courts have rejected education clause challenges to public school funding legislation when the challenge is based upon the adequacy of funding or upon uniformity of funding *See, e.g., Lujan v. Colorado State Board of Education,* 649 P.2d 1005, 1025 (Colo. 1982) (Colorado's constitution requirement of a 'thorough and uniform system of free public schools,' while mandating equal educational opportunities, does not necessitate equal expenditures per pupil); *McDaniel v. Thomas,* 248 Ga. 632, 285 S.E.2d 156, 164 (1981) (constitution requires only an 'adequate education,' not equal education opportunities); *Thompson v. Engelking,* 96 Idaho 793, 537 P.2d 635, 647 (1975) (equal

educational opportunities not required by constitutional requirement of 'general, uniform and thorough system' of public schools); *Hornbeck v. Somerset County Board of Education*, 295 Md. 597, 458 A.2d 758, 776 (1983) ('thorough and efficient' clause commands only that legislature provide the students of the state 'with a basic public school education'); *East Jackson Public Schools v. State*, 133 Mich. App. 132, 348 N.W.2d 303, 305 (1984) (provision mandating legislature to 'maintain and support a system of free public elementary and secondary schools' grants only a right to an adequate education); *Board of Education, Levittown Union Free School District v. Nyquist*, 57 N.Y.2d 27, 47-48, 453 N.Y.S.2d 643, 653, 439 N.E.2d 359, 368-69 (1982) (constitutional provision for 'the maintenance and support of a system of free schools' contemplates only 'minimal acceptable facilities and services'), appeal dismissed, 459 U.S. 1138 (1983); *Britt v. North Carolina State Board of Education*, 86 N.C. App. 282, 357 S.E.2d 432, 436 (1987) (state constitutional provision requiring 'general and uniform system of free public schools . . . wherein equal opportunities shall be provided for all students' mandates only equal access to schools, not a right to identical opportunities); *Board of Education of the City School District of Cincinnati v. Walter*, 58 Ohio St. 2d 368, 390 N.E.2d 813, 825, 12 Ohio Op. 3d 327 (1979), *cert. denied*, 444 U.S. 1015 (1980) (constitutional requirement that a 'thorough and efficient' education be provided mandates only that students not be deprived of 'education opportunity'); *Fair School Finance Council of Oklahoma, Inc. v. State*, 746 P.2d 1135, 1149 (Okla. 1987) (mandate to 'establish and maintain' a public school system guarantees

only a 'basic, adequate education according to standards . . . '); *Olsen v. State ex rel. Johnson*, 276 Or. 9, 554 P.2d 139, 148 (1976) (constitution prescribing a 'uniform and general system' of schools guarantees only a minimum of educational opportunity); *Danson v. Casey*, 484 Pa. 415, 399 A.2d 360, 365 (1979) (a 'thorough and efficient' education is equated with an 'adequate,' 'minimum,' or 'basic' education); *Richland County v. Campbell*, 294 S.C. 346, 364 S.E.2d 470, 472 (1988) (constitutional requirement that legislature maintain and support public schools guarantees equal standards and equal opportunity under the method of funding chosen by the legislature).

"Even in states which the courts have upheld constitutional challenges based upon their respective education clauses, often only 'adequacy' has been required. *See, e.g., Alabama Coalition for Equity, Inc. v. Hunt*, No. CV-90-883-R (Ala. Cir. 1993) (1993 Westlaw 204083) (constitution's education guarantee accords right to 'quality education that is generous in its provision and that meet minimum standards of adequacy'); *Rose v. Council for Better Education*, 790 S.W.2d 186, 211 (Ky. 1989) (the constitutionally required 'efficient' system of public schools' must be substantially uniform throughout the state' providing every child in the state 'with an equal opportunity to have an adequate education'); *Helena Elementary School District No. 1 v. State*, 236 Mont. 44, 769 P.2d 684, 690 (1989) (constitution expressly provides for 'equality of educational opportunity'), *modified in* 236 Mont. 44, 784 P.2d 412 (1990) (delaying effective date of decision); *Abbott v. Burke*, 119 N.J. 287, 575 A.2d 359, 368-69 (1990) ('thorough and efficient'

system will provide an 'equal educational opportunity for children' enabling each student to become 'a citizen and . . . a competitor in the labor market'); *Edgewood Independent School District v. Kirby*, 777 S.W.2d 391, 397 (Tex. 1989) ('efficient' system guarantees 'substantially equal access to similar revenues per pupil at similar levels of tax effort' so that students are 'afforded a substantially equal opportunity to have access to educational funds'); *Seattle School District No. 1 of King County v. State*, 90 Wash. 2d 476, 585 P.2d 71, 97 (1978) (constitutional language calling for 'ample provision' for a 'general and uniform' system of schools imposes a duty to 'make ample provision for the "basic education" of our resident children through a general and uniform system supported by dependable and regular tax sources'); *Pauley v. Kelly*, 162 W. Va. 672, 255 S.E.2d 859, 877 (1979) ('thorough and efficient' education is one which 'develops, as best the state of education expertise allows, the minds, bodies and social morality of its charges to prepare them for useful and happy occupations, recreation and citizenship, and does so economically').

"B. *The Standard in Kansas*

"What may be concluded from these decisions is that the analysis necessarily differs state to state. While many courts state laudatory goals for educational systems, such statements reach beyond the requirement of the Kansas constitution.

"The standard most comparable to the Kansas constitutional requirement of 'suitable' funding is a requirement of adequacy found in several state constitutions. In common terms,

'suitable' means fitting, proper, appropriate, or satisfactory. *Webster's New Collegiate Dictionary* (1977). Suitability does not mandate excellence or high quality. In fact, suitability does not imply any objective, quantifiable education standard against which schools can be measured by a court. Rather, value judgments must be made regardless of whether the constitutional mandate requires that education be suitable, sufficient, appropriate, or adequate. Because these concepts are amorphous, courts have molded tests by which to assess the level of funding.

"One of the most frequently cited definitions of an adequate education was one proffered by the Kentucky Supreme Court when it iterated six goals of education: (1) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization; (2) sufficient knowledge of economic, social, and political systems to enable the student to understand the issues that affect the community, state, and nation; (3) sufficient self-knowledge and knowledge of his or her mental and physical wellness; (4) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage; (5) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and (6) sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states whether competing in academics or the job market. *Rose v. Council for Better Education,* 790 S.W.2d at 212.

"Another court indicated that a sufficient education was one which 'will equip all the students of this state to perform their roles as citizens and competitors in the same society'. *Abbott v. Burke*, 575 A.2d 359, 410 (N.J. 1990).

"Most recently, these definitions were embraced by the Alabama Circuit Court, in *Alabama Coalition for Equity, Inc. v. Hunt*, No. CV-90-883-R (Ala. Cir. 1993) (1993 Westlaw 204083), after the court found that the state's constitution's education 'guarantee is one that accords school children of the state the right to a quality education that is generous in its provision and meets minimum standards of adequacy'. *Id.* at 1993 WL *52.

"The definitions in *Hunt*, *Rose* and *Abbott* bear striking resemblance to the ten statements or goals enunciated by the Kansas legislature in defining the outcomes for Kansas schools, which includes the goal of preparing the learners to live, learn, and work in a global society. K.S.A. 72-6439. Through the quality performance accreditation standards, the Act provides a legislative and regulatory mechanism for judging whether the education is 'suitable'. These standards were developed after considerable study by educators from this state and others. It is well settled that courts should not substitute judicial judgment for educational decisions and standards. *Fiinstad v. Washburn University of Topeka*, 252 Kan. 465, 475, 845 P.2d 685 (1992). Hence, the court will not substitute its judgment of what is 'suitable', but will utilize as a base the standards enunciated by the legislature and the state department of education.

"The evidence presented is that all schools in Kansas are able to meet such a standard. Some Plaintiffs, particularly Moscow [of the Southwestern group of plaintiffs], argue that eventually the Act will result in closure of schools and even the district and, therefore, the financing will not be suitable. However, the court cannot base its judgment upon the speculation of what may happen in the future. At this time, the standards are being met. Nor is the judgment of the court controlled by the many policy concerns raised by Plaintiffs who indicted the Act for failing to ensure that per pupil spending would continue to increase in proportion with increasing needs, for not allowing local boards to make long range plans, for not providing an inflationary factor, and for fostering a spend-or-lose philosophy.

"However, the issue of suitability is not stagnant; past history teaches that this issue must be closely monitored. Previous school finance legislation, when initially attacked upon enactment or modification, was determined constitutional. Then, underfunding and inequitable distribution of finances lead to judicial determination that the legislation no longer complied with constitutional provisions. *Compare Knowles v. Board of Education*, Case No. 77 CV 251 (Shawnee County District Court, January 26, 1981) (upon remand from the Supreme Court [219 Kan. 271, 547 P.2d 699 (1976)] for evaluation of legislative modifications, finding the School District Equalization Act [SDEA] constitutional) with *Mock v. State of Kansas*, Consolidated Case No. 91-CV-1009 (Shawnee County District Court, October 14, 1991) (impliedly holding SDEA was unconstitutional). However, while

> the issues raised by Plaintiffs raise serious policy questions, the arguments do not compel a determination that the financing is not 'suitable' at the present time. The Act does not violate section 6 of article 6."

The 10 goals referred to in the district court's opinion are found at K.S.A. 72-6439(a), a part of the Act, and are set forth as follows:

> "(1) Teachers establish high expectations for learning and monitoring pupil achievement through multiple assessment techniques;
>
> (2) schools have a basic mission which prepares the learners to live, learn, and work in a global society;
>
> (3) schools provide planned learning activities within an orderly and safe environment which is conducive to learning;
>
> (4) schools provide instructional leadership which results in improved pupil performance in an effective school environment;
>
> (5) pupils have the communication skills necessary to live, learn, and work in a global society;
>
> (6) pupils think creatively and problem-solve in order to live, learn and work in a global society;
>
> (7) pupils work effectively both independently and in groups in order to live, learn and work in a global society;
>
> (8) pupils have the physical and emotional well-being necessary to live, learn and work in a global society;

(9) all staff engage in ongoing professional development;

(10) pupils participate in lifelong learning."

We agree with the district court's analysis and conclusion that the Act does not contravene the provisions of § 6(b) of Article 6 that the legislature shall make suitable provision for the financing of public education.

EQUAL PROTECTION

The Blue Valley plaintiffs contend that certain provisions violate the right of equal protection contained in § 1 of the Kansas Constitution Bill of Rights, which provides:

> "All men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness."

This section is given the same construction as the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution. *Henry v. Bauder,* 213 Kan. 751, 752-53, 518 P.2d 362 (1974); *Tri-State Hotel Co. v. Londerholm,* 195 Kan. 748, 759, 408 P.2d 877 (1965).

Before turning to the particular claims made, we must determine the appropriate level of scrutiny to be applied.

> "The various levels of scrutiny employed in determining whether a statutory scheme violates equal protection guarantees recently were reviewed by the court in *Stephenson v. Sugar Creek Packing,* 250 Kan. 768, 774-75, 830 P.2d 41 (1992), wherein we stated:

'As quoted in *State ex rel Schneider v. Liggett*, 223 Kan. 610, 613, 576 P.2d 221 (1978), the United States Supreme Court has described the concept of "equal protection" as one which "emphasizes disparity in treatment by a State between classes of individuals whose situations are arguably indistinguishable." *Ross v. Moffitt*, 417 U.S. 600, 609, 41 L. Ed. 2d 341, 94 S. Ct. 2437 (1974). Whether or not the legislation passes constitutional muster depends on the relationship borne by the challenged classification to the objective sought by its creation. . . .

'The examination of the relationship between the classification and the objective has become quite formalized. The United States Supreme Court articulates and applies three degrees of scrutiny when examining the relationship. The various levels of scrutiny were reviewed by this court in *Farley v. Engelken*, 241 Kan. 663, 669-70, 740 P.2d 1058 (1987).

'The least strict scrutiny is referred to as the "rational basis" test. Relevance is the only relationship required between the classification and the objective. In *McGowan v. Maryland*, 366 U.S. 420, 425, 6 L.Ed. 2d 393, 81 S. Ct. 1101 (1961), it was explained that "[t]he constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective." Insofar as the objective is concerned, "[a] statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." 366 U.S. at 426. Thus, it appears that the legislature's purpose in creating the classification need not be established. The classification must, however,

bear a rational relationship to a legitimate objective. As noted by Justice Marshall in his dissent in *Lyng v. Automobile Workers*, 485 U.S. 360, 375, 99 L. Ed. 2d 380, 108 S. Ct. 1184 (1988):

" 'The Court fails to note, however, that this standard of review, although deferential, ' " is not a toothless one." ' *Mathews v. De Castro*, 429 U.S. 181, 185 (1976), quoting *Mathews v. Lucas*, 427 U.S. 495, 510 (1976). The rational-basis test contains two substantive limitations on legislative choice: legislative enactments must implicate legitimate goals, and the means chosen by the legislature must bear a rational relationship to those goals. In an alternative formulation, the Court has explained that these limitations amount to a prescription that 'all persons similarly situated should be treated alike.' "

'The intermediate level of scrutiny is termed "heightened scrutiny." *Farley v. Engelken*, 241 Kan. at 669. "It requires the statutory classification to substantially further a legitimate legislative purpose." 241 Kan. at 669. Another, perhaps stronger, statement of the heightened scrutiny test is that the classification "must serve important governmental objectives and must be substantially related to achievement of those objectives." *Craig v. Boren*, 429 U.S. 190, 197, 50 L. Ed. 2d 397, 97 S. Ct. 451 (1976).

'The highest level of scrutiny requires that the defendant demonstrate "that the classification is necessary to serve a compelling state interest." *Farley v. Engleken*, 241 Kan. at 670. This "strict scrutiny" test has been applied by the United States Supreme Court in cases involving classifications such as race and fundamental rights guaranteed by the federal Constitution.' "

Thompson v. KFB Ins. Co., 252 Kan. 1010, 1016-17, 850 P.2d 773 (1993).

The district court applied the rational basis test. The Blue Valley plaintiffs contend that the strict scrutiny test should have been applied or, alternatively, the heightened scrutiny test. We do not agree.

In *San Antonio School District v. Rodriguez*, 411 U.S. 1, 37, 36 L. Ed. 2d 16, 93 S. Ct. 1278, *Reh. denied* 411 U.S. 959 (1973), the United States Supreme Court rejected an equal protection challenge to the Texas system of financing public schools because, *inter alia*, education was not a "fundamental right." A right is "fundamental" for purposes of equal protection analysis, the court said, if it is "explicitly or implicitly guaranteed by the Constitution." 411 U.S. at 33-34.

The *Rodriguez* court, addressing what it termed a direct attack on the way Texas chooses to raise and disburse state and local funds, turned aside this challenge, stating:

> " 'The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized . . . [T]he passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a legislature in formulating sound tax policies. . . . It has . . . been pointed out that in taxation, even more than in other fields, legislatures possess the greatest freedom in classification. Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration

> that a classification is a hostile and oppressive discrimination against particular persons and classes. . . . ' *Madden v. Kentucky*, 309 U.S. 83, 87-88[, 84 L. Ed. 590, 60 S. Ct. 406 (1940)]." 411 U.S. at 40-41.

We quoted *Rodriguez* with approval in *Knowles v. State Board of Education*, 219 Kan. 271, 277-78, 547 P.2d 699 (1976), a case bringing an equal protection challenge to the SDEA, but declined, because of a limited record, to decide the constitutional issue.

Here, the district court exhaustively analyzed decisions from other jurisdictions in concluding that education was not a fundamental right requiring application of the strict scrutiny test in analyzing legislation involving the funding of public education. A portion of the district court's persuasive rationale is as follows:

> "In addition to rejecting . . . the notion that the importance of education is a sufficient ground for applying strict scrutiny, many state courts have enumerated several factors which have compelled them to find that strict scrutiny is not the appropriate level of review. First, courts have noted that there is no authoritative consensus on how to provide the greatest educational opportunity for all students. As the Colorado Supreme Court noted:
>
> > '[T]hese are considerations and goals which properly lie within the legislative domain. Judicial intrusion to weigh such considerations and achieve such goals must be avoided. This is especially so in this case where the controversy, as we perceive it, is essentially directed toward what is the best public policy which can be adopted to attain

> quality schooling and equal educational opportunity of all children who attend our public schools. *See* M. Cox, *State Judicial Power: A Separation of Powers Perspective*, 34 Okla. L. Rev. 207, 227 (1981).'

Lujan v. Colorado State Board of Education, 649 P.2d 1005, 1018 (Colo. 1982).

"The other frequently cited reason is that courts should avoid excessive involvement in questions of taxation. *See McDaniel v. Thomas*, 248 Ga. 632, 647, 285 S.E.2d 156, 167 (1981); *Lujan v. Colorado State Board of Education*, 649 P.2d 1005, 1017 (Colo. 1982); *Hornbeck v. Somerset County Board of Education*, 295 Md. 597, 458 A.2d 759, 786 (1983); *Board of Education of City School District of City of Cincinnati v. Walter*, 58 Ohio St. 2d 368, 390 N.E.2d 813, 12 Ohio Op. 3d 327 (1979), *cert. denied*, 444 U.S. 1015 (1980). This reasoning follows from *Rodriguez* as approvingly quoted by the Kansas Supreme Court in *Knowles*. The United States Supreme Court noted that education presents a myriad of intractable economic and social problems. 411 U.S. at 42, 93 S. Ct. at 1031. The Court, at 41-42, 93 S. Ct. at 1301, acknowledged its lack of expertise and familiarity with the problems implicated in the raising and disposing of public revenues associated with public education.

"Closely related to this reasoning is another reason often articulated by courts in rejecting strict scrutiny. The Maryland Court of Appeals noted:

> 'In this regard, it must be noted that many, if not all, of these rights could, within the *Rodriguez* formulation of fundamental rights, be deemed implicitly guaranteed in

> most state constitutions, thereby requiring application of the strict scrutiny test – a result which the defendant[s] say is certain to wreak havoc with the ability of state legislatures to deal effectively with such critical governmental services. To conclude that education is a right so fundamental as to require strict scrutiny analysis would, the defendants say, likely render unconstitutional a substantial portion of the statutes, bylaws and practices that regulate education in Maryland. The defendants advance the further suggestion that if there must be, as the trial judge held, a compelling State interest that would justify deviation from mathematically exact dollar per pupil equality among all of the school districts, intra-district disparities between areas, schools and even classes within schools in the same county could not be sustained. Similarly, if the right to education is fundamental, it is suggested that the State would be required to show a compelling interest for maintaining any differences among the State's school districts, even if the differences were not financial.'

Hornbeck v. Somerset County Board of Education, 295 Md. 597, 458 A.2d 758, 785-86 (1983). Later in the decision, the Court recognized that these arguments by the defendants were valid, noting that the strict scrutiny test 'foreordains the invalidation of nearly every classification involving such analysis'. *Id.* at 786.

"Finally, many decisions recognize the impossibility of measuring equal protection analysis. While it may be recognized that money

does make a difference in education, it is equally recognized that there are many other variables. Hence, educators, social scientists, and courts have been unable to agree on the correlation between educational expenditures and the quality of education. *See* Murnane, 'Interpreting the Evidence on "Does Money Matter" ', 28 Harv. J. on Leg. 457 (1991); Ferguson, 'Paying for Public Education: New Evidence on How and Why Money Matters', 28 Harv. J. on Legis. 465 (1991). As a result it is difficult, if not impossible, to develop an ascertainable standard by which to measure equality. Few commentators or courts recommend dollar for dollar equalization. Certainly, the testimony before this court was that dollar for dollar spending does not result in equal educational opportunities. Some state courts have been aided in the development of a standard by the state constitution's statement of a benchmark or standard to measure equality. *See* McUsic, 'The Use of Education Clauses in School Finance Reform Litigation,' 28 Harv. J. on Leg. 307, 319-25 (1992). However, the Kansas education clause does not contain this requirement or a standard. Kan. Const. art. 6, § 1. *See* McUsic, 28 Harv. J. on Leg. at 325.

"Hence, a variety of persuasive reasons exist for applying a rational basis analysis to the equal protection arguments raised by the Plaintiffs. The analysis of these decisions is persuasive and leads to the determination that the rational basis test should be applied."

A look at specific provisions of the Act reflects we are not dealing with any suspect classes. Blue Valley is challenging on equal protection grounds the following portions of the Act: "The BSAPP of $3,600; the bilingual education weighting factor of .2; the vocational education weighting factor of .5; the low enrollment weighting factor; the at-risk weighting factor of .05; the school facilities weighting factor of .25; the LOB [Local Option Budget] provisions; and the SGSA [Supplemental General State Aid] provisions."

We conclude the district court was correct in applying the rational basis test herein.

That the legislation is in a legitimate area for state action cannot be disputed. The constitution mandates that the legislature establish and maintain schools and provide suitable financing thereof, as previously discussed.

In this issue, Blue Valley does not actually dispute the legislature's authority to draw lines in these categories – rather, a complaint is made of where the lines were drawn. The refrain is much the same for each of the complained-of provisions – empirical studies and statistical information were lacking to support a $3,600 BSAPP, the LOB provision, the SGSA provision, and the disputed weighting factors at the time the legislature acted. Hence, the argument goes, the lines drawn lack a rational basis.

At trial, massive amounts of testimony, expert and lay, as well as scientific studies were admitted relative to the various classifications. The focus was more on dissatisfaction with where the lines were drawn than on where

the lines should have been drawn. There was little agreement or exactitude in such evidence. The argument before us appears to be that a rational basis must always be grounded on and arise from scientific data. Blue Valley relies heavily for its proposition on *Thompson v. KFB Ins. Co.*, 252 Kan. 1010. At issue in *Thompson* was legislation which modified the prior law that had excluded evidence of collateral source benefits in personal injury cases to permit the introduction of such evidence in claims exceeding $150,000. The proponents argued that the "line is drawn at an approximation of the dollar amount at which the potential duplicative recovery and the potential costs of discovery of collateral source converge." 252 Kan. at 1022. This court invalidated the legislation, stating:

> "The problem with the proponents' contention is that they fail to provide facts or any data upon which to make such a projection, such as that plaintiffs seeking damages in excess of $150,000 have more collateral sources available to them than those plaintiffs seeking less, or that the costs of discovery are more because a plaintiff seeks damages in excess of $150,000, or that there is a statistical relationship between the amount a plaintiff claims and the collateral sources available to a plaintiff.
>
> "We are not presented with a set of facts upon which we can conclude the challenged classification is rationally related to a legitimate legislative purpose. Instead, we are presented with a wholly unsubstantiated assumption. Even assuming the objective of cutting insurance costs is a legitimate legislative goal, we do not find the classification in the present case

> will reasonably further that purpose. Under the rational basis test, great deference is given to the legislature in establishing classifications. However, where, as here, the only basis for the classification is to deny a benefit to one group for no purpose other than to discriminate against that group, the statutory classification is not only mathematically imprecise, it is without a rational basis and is arbitrary. Here, the challenged classification unreasonably discriminates in favor of claimants demanding $150,000 or less and unduly burdens those seeking judgments in excess of $150,000. We hold that the provision of K.S.A. 1992 Supp. 60-3802 which allows evidence of collateral source benefits where claimant demands judgment for damages in excess of $150,000 violates the equal protection clause of the Fourteenth Amendment to the United States Constitution and § 1 of the Bill of Rights of the Kansas Constitution." 252 Kan. at 1022-23.

Blue Valley waves the first paragraph of the cited quote aloft in support of its position and ignores the second paragraph. The legislation in *Thompson* fell because this court held that classifying injured plaintiffs into two groups was not shown to be rationally related *to a legitimate legislative purpose.* The classification served only to discriminate against one class of injured persons. As previously noted, that a legitimate legislative purpose is involved in the Act herein is a given. Lines have to be drawn in the financing of public schools. The dispute herein is primarily over where the lines were drawn.

As was also stated in *Thompson:*

> "This court has stated that '[e]stablishment of classifications with mathematic precision is not

> required.' *State ex rel. Schneider v. Liggett*, 223 Kan. 610, 619, 576 P.2d 221 (1978). To the same effect, the court quoted a dissenting opinion of Mr. Justice Homes: ' " . . . [W]hen it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the legislature must be accepted unless we can say that it is very wide of any reasonable mark." ' 223 Kan. at 619 (quoting *Louisville Gas Co. v. Coleman*, 277 U.S. 32, 41, 72 L. Ed. 770, 48 S. Ct. 423 [1928]). A statutory classification that has a reasonable basis is not violative of the due process clause simply because it is not made with mathematical precision. . . . In *Henry*, the court stated that '[t]here must be some difference in character, condition, or situation, to justify distinction . . . ; otherwise, the classification is forced and unreal, and greater burdens are, in fact, imposed on some than on others of the same desert'. (Citation omitted). 213 Kan. at 753. Although the classification need not be mathematically precise, it must have a rational basis." 252 Kan. at 1021.

The funding of public education is a complex, constantly evolving process. The legislature would be derelict in its constitutional duty if it just gave each school district a blank check each year. Reliance solely on local property tax levies would be disastrous for the smaller and/or poorer districts which have depended on state aid for many years. Rules have to be made and lines drawn in providing "suitable financing." The drawing of these lines lies at the very heart of the legislative process and the compromises inherent in the process.

As the New York Court of Appeals stated in *Levittown UFSD v. Nyquist*, 57 N.Y.2d 27, 38-39, 439 N.E.2d 359 (1982):

> "The determination of the amounts, sources, and objectives of expenditures of public moneys for educational purposes, especially at the State level, presents issues of enormous practical and political complexity, and resolution appropriately is largely left to the interplay of the interests and forces directly involved and indirectly affected, in the arenas of legislative and executive activity. This is of the very essence of our governmental and political polity. It would normally be inappropriate, therefore, for the courts to intrude upon such decision-making (see *Matter of Board of Educ. v. City of New York*, 41 NY2d 535, 538; *Matter of Anderson v. Krupsak*, 40 NY2d 397, 402-403; *New York Public Interest Research Group v. Steingut*, 40 NY2d 250, 257; cf. *James v. Board of Educ.*, 42 NY2d 357)."

The New York court then applied the rational basis test and upheld the challenged legislation providing for the financing of public schools. We agree with the New York court's quoted rationale.

After carefully examining the claims made as to the complained-of provisions of the Act, we find there is a rational basis for each such provision without further discussion except for the low enrollment weighting factor.

This one provision requires further discussion as the district court held there was no rational basis therefor and, upon finding this provision was not severable, held the entire Act was constitutionally impermissible.

The weighting factors to serve students for whom additional costs are associated are: (1) program weighting for bilingual education students and vocational education students, (2) at-risk students, (3) students in low enrollment districts, (4) students in new facilities, and (5) students who are transported. Of these, the low enrollment weighting factor accounts for the allocation of the most funds of any of the weights: approximately $221 million. Although 85% of the districts received low enrollment weighting funds, this additional money affected slightly more than one-third (37%) of Kansas students. Unlike the other weighting factors, the low enrollment weighting factor is applied across-the-board to all students in the district as opposed to that number of students having the characteristic necessary for the particular weighting factor.

Plain common sense advises there is a rational basis for the allowance of extra funding for low enrollment situations. Overhead costs for a third-grade class containing 10 "ordinary" students are virtually the same as one containing 20 "ordinary" students. A great deal of testimony was presented to the district court on low enrollment weighting factors. There was virtual unanimity in the evidence that additional funding in this area was appropriate, but little specific evidence on where the lines should be drawn. Under the Act, regressive weighting factors are applied to school districts having less than 100 full-time students, 100-299 full-time students, and 300-1,899 full-time students. In the school year 1992-93 there were three school districts in the first category, 58 in the second, and 200 in the third. Thus, 261 school districts

out of a total of 304 received at least some measure of low enrollment weighting.

The thrust of Blue Valley's argument is that the 1,899 line is too high, is the result only of compromise aimed at getting additional supporting legislators, is not supported by statistical or scientific data, and has no rational basis.

The district court carefully analyzed the evidence on low enrollment weighting and held:

> "[T]he record does not contain a rational basis *grounded upon education theory* for distinguishing between districts larger than 1,900 and smaller schools, especially those districts with an enrollment between 400 and 1,899 students." (Emphasis supplied.)

The emphasized portion of the holding illuminates where the district court erred. The district court acknowledged there was historical precedent in Kansas for low enrollment weighting and the establishing of categories based upon student numbers with different levels of funding. The district court further found:

> "When the 1991-92 costs are graphed, the costs are quite high for small schools with a decreasing cost which flattens out on the curve. There was debate in the legislature as to precisely where the costs flattened, but generally it was in the range of 1,800 to 2,000 students. Finally, the legislature made the cutoff at 1,900. The graph then illustrates that after the flattening at about 2,000, the curve rises again at the level of 10,000."

The district court's decision was obviously based upon the expert testimony at trial which did not support the 1,899 cut-off but was inconsistent as to where a more appropriate line should be drawn. The absence of scientific evidence at trial specifically approving the 1,899 cut-off is not determinative of whether or not the legislature had a rational basis for drawing the line where it did. We conclude there is a rational relationship between the legislature's legitimate objective of more suitably funding public schools and the classifications created in the low enrollment weighting factor. The district court erred in holding otherwise.

MULTIPLE SUBJECTS

Some of the plaintiffs herein contend the district court erred in holding that the Act was not violative of Article 2, § 16 of the Kansas Constitution, which provides, in pertinent part:

> "No bill shall contain more than one subject, except appropriation bills and bills for revision or codification of statutes. The subject of each bill shall be expressed in its title. . . . The provisions of this section shall be liberally construed to effectuate the acts of the legislature."

The purposes of the "one-subject" constitutional provision have been stated many times:

> "They include the prevention of a matter of legislative merit from being tied to an unworthy matter, the prevention of hodge-podge or log-rolling legislation, the prevention of surreptitious legislation, and the lessening of improper influences which may result from intermixing

> objects of legislation in the same act which have no relation to each other." *Garden Enterprises, Inc. v. City of Kansas City*, 219 Kan. 620, 622, 549 P.2d 864 (1976).

" 'Log-rolling' refers to a situation in which several legislators combine their unrelated proposals and present them as separate provisions of one bill." Note, *Appropriation Bills and the Kansas One-Subject Rule*, 30 Kan. L. Rev. 625 (1982). One has only to look to federal legislation to see the evils of operating without such a provision.

We recently examined this constitutional requirement in *Harding v. K.C. Wall Products, Inc.*, 250 Kan. 655, Syl. ¶ 8, 831 P.2d 958 (1992), where we held:

> "Article 2, § 16, of the Kansas Constitution should not be construed narrowly or technically to invalidate proper and needful legislation, and where the subject of the legislation is germane to other provisions, the legislation is not objectionable as containing more than one subject or as containing matter not expressed in its title. This provision is violated only where an act of legislation embraces two or more dissimilar and discordant subjects that cannot reasonably be considered as having any legitimate connection with or relationship to each other."

The Act herein is a comprehensive package. It drastically alters the method of financing public education, sets quality performance standards, and raises revenue to fund the package by a variety of means, including raising existing tax rates and earmarking the increased revenues for general state aid to school districts.

It is argued that the earmarking of these additional revenues was a ploy to avoid the requirements of Article 2, § 16 and is an example of log-rolling. To buttress this argument, reference is made to the legislative history of the 1993 legislation which amended the Act, including a report of the Kansas Committee on School District Finance and Quality Performance covering the Committee's interim study of the Act. The Committee stated:

> "The new school finance law provides that the enhanced sales and income tax revenues attributable to income and corporate income tax rate increases and sales and use tax increases and exemption removal be earmarked and used for general state aid to school districts. Perhaps the main reason for the earmarking was to prevent a challenge to the constitutionality of the legislation on the grounds that it violated the 'one subject' provision of the Kansas Constitution. In other words, earmarking the new tax revenues for general state aid to school districts provided what was considered by some to be the necessary nexus between the law's taxing provisions and its school aid distribution plan. Now that the bill has become law, there is no constitutional imperative to continue the earmarking."

This subsequent report does not destroy the natural nexus in the original bill. Everything in the Act relates to public education. The Act is a package which increased state funding and school district accountability, changed the basic policy underlying the funding of public schools, and made a variety of other public school law changes. The package was complete – the changes were set forth, and the means to raise sufficient revenue to fund the

changes were included. Rather than separating the package into various components, it was presented as a package. There is certainly nothing inherently wrong in tying expenditures and the means of raising the extra revenue together in order that members of the legislature may see where revenue will come from before they vote on its expenditure.

Applying *Harding*, we conclude the Act does not embrace two or more dissimilar and discordant subjects that cannot reasonably be considered as having any legitimate connection with or relationship to each other.

EXCESSIVE TAX AS A TAKING

The Burlington plaintiffs contend that the Act, specifically K.S.A. 72-6431(d), violates the Fifth and Fourteenth Amendments to the United States Constitution, as well as §§ 1 and 2 of the Kansas Constitution Bill of Rights. They contend that the Act's recapture provision, which results in funds from their district being used in another district, constitutes a "taking" in violation of the various constitutional provisions.

K.S.A. 72-6431(d) provides:

> "On June 1 of each year, commencing on June 1, 1993, the amount, if any, by which a district's local effort exceeds the amount of the district's state financial aid, as determined by the state board, shall be remitted to the state treasurer."

Funds which are remitted, pursuant to K.S.A. 72-6431(d), are often labelled "recapture" funds. Once turned over to the State, these monies are deposited in

the State School District Finance Fund and are remitted to those districts which do not have sufficient local effort to fully fund the district's state financial aid. The difference between the district's state financial aid and the district's local effort is the amount of "general state aid" to which the district is entitled. K.S.A. 72-6416.

Burlington is one of approximately 10 districts which had local tax efforts in excess of the district's state financial aid entitlement. The 10 districts contributed an estimated $14 million of recapture funds.

The Takings Clause of the Fifth Amendment of the United States Constitution, made applicable to the State through the Fourteenth Amendment, *Chicago, Burlington &c. R'd v. Chicago,* 166 U.S. 226, 239, 41 L. Ed. 979, 17 S. Ct. 581 (1897), provides: "[N]or shall private property be taken for public use, without just compensation." One of the principal purposes of the Takings Clause is "to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States,* 364 U.S. 40, 49, L. Ed. 2d 1554, 80 S. Ct. 1563 (1960).

Nearly 100 years ago, the United States Supreme Court described a "taking":

> "In our judgment the exaction from the owner of private property of the cost of a public improvement in substantial excess of the special benefits accruing to him is, *to the extent of such excess,* a taking, under the guise of taxation, of private property for public use without compensation. We say 'substantial excess,' because exact equality of taxation is not always attainable, and for that reason the excess of cost over special

> benefits, unless it be of a material character, ought not to be regarded by a court of equity when its aid is invoked to restrain the enforcement of a special assessment." *Village of Norwood v. Baker*, 172 U.S. 269, 279, 43 L. Ed. 443, 19 S. Ct. 187 (1898).

Here, the issue is whether taxpayers in the recapture districts receive a benefit for the taxes which ultimately educate students in another school district or whether the mill levy imposed in those districts imposes such a disproportionate inequality between the burden imposed and the benefit received that it constitutes a "taking" in violation of the Fourteenth Amendment.

The trial court reasoned that, in today's society, each Kansas taxpayer benefits from the quality or suffers from the lack of quality of the education received by all Kansas students. The court stated:

> "The Act embodies a recognition that in the 1990's, the State cannot thrive with a parochial attitude of educating 'our' children; in today's heterogeneous and mobile society each taxpayer benefits or suffers from the quality or lack of quality of the education received by all Kansas students. Education is the greatest vehicle available to the state to prepare our children to be the neighbors, parents, leaders, workers, taxpayers, citizens, voters, and patriots of tomorrow. Having small pockets of well-educated students does not support an economy or society in the 1990's and beyond."

We agree therewith. It is well established that a taxpayer does not, personally, have to have children in a

public school before he or she benefits from public education. As stated in *Morton Salt Co. v. City of South Hutchinson*, 159 F.2d 897, 900-01 (1947):

> "It is no constitutional defense to a tax that the taxpayer is not directly benefited thereby, or is less benefited than others who pay the same or less tax. [Citations omitted.] For example, 'every citizen is bound to pay his proportion of a school tax, although he has no children, *or is not a resident*, and this applies also to corporations. . . .' Cooley, [Taxation, 4th ed., vol. 1], Sec. 89, p. 214. The fact of living in an organized society carries with it the obligations to contribute to its general welfare, whether or not the recipient of particular benefits. Furthermore, the legislative determination that the property taxed will be benefited by the public improvement for which it is assessed is ordinarily conclusive."

One cannot ignore the fact that the Act is intended to remedy some existing inequities relative to public education and its funding. One of the basic purposes of the Act is to reduce the disparity among the districts. The legislature, in enacting this legislation, viewed public education and its funding from a broader perspective. The State of Kansas is viewed as a whole for funding purposes rather than focusing on the legislatively created individual school districts. The education of each similarly situated student is to be equally funded regardless of where he or she resides. Stripped of its variables (local option budget, etc.), the Act provides that the cost of public education as a charge against taxable property will be at a uniform mill rate across the state. Thus, the cost of public education as a charge against taxable property no longer depends on where the property is located or the assessed

valuation of other property in the district. It would be difficult to conclude that a uniform mill rate to fund public education is an excessive taking violative of the respective constitutional provisions.

Burlington taxpayers, primarily because of the existence in their essentially rural district of a large taxable public utility facility, have enjoyed an artificially low tax levy to fund public education. The major shift in policy in the funding of public education embodied in the Act has resulted in a dramatic rise in the district's mill levy. The excess raised is used to assist in funding less fortunate districts. However, the Burlington taxpayers are paying only the same uniform mill levy for public education as the other Kansas taxpayers.

We conclude the Act does not result in a constitutionally impermissible "taking."

UNIFORMITY

The Burlington plaintiffs contend that the Act is violative of Article 2, § 17 of the Kansas Constitution, which provides:

> "All laws of a general nature shall have a uniform operation throughout the state: *Provided*, The legislature may designate areas in counties that have become urban in character as 'urban areas' and enact special laws giving to any one or more of such counties or urban areas such powers of local government and consolidation of local government as the legislature may deem proper."

The only prohibition contained in Article 2, § 17 of the Kansas Constitution relates to laws of a general nature which affect the people of the state generally. Such laws must apply uniformly throughout the state and, thus, must be geographically uniform.

In *Stephens v. Snyder Clinic Ass'n*, 230 Kan. 115, 127, 631 P.2d 222 (1981), quoted with approval in *State ex rel. Stephan v. Smith*, 242 Kan. 336, 380, 747 P.2d 816 (1987), we traced the history of Article 2, § 17 from its original adoption in 1859 to the present, and concluded:

> "It is important to note that the 1974 amendment of Article 2, Section 17, has completely eliminated the second sentence which provided that 'in all cases where a general law can be made applicable, no special law shall be enacted.' It is thus to be emphasized that Article 2, Section 17, of the Kansas Constitution as of 1981, simply requires that all laws of a general nature shall have a uniform operation throughout the state. The effect of this change is that the only prohibition contained in Article 2, Section 17, relates to laws of a general nature which affect the people of the state generally. Such laws must apply uniformly throughout the state and thus be *geographically* uniform. We, therefore, hold that Article 2, Section 17, of the Kansas Constitution as it exists today is not applicable to constitutional challenges based upon a denial of equal protection of the laws not involving a claim of lack of geographical uniformity."

A rational justification for treating different localities differently preserves the constitutionality of a statute under an Article 2, § 17 challenge. *Board of Riley County*

Comm'rs v. City of Junction City, 233 Kan. 947, 958-59, 667 P.2d 868 (1983), and authorities cited therein. However, the basis of the differential treatment cannot be based entirely upon financial or economic considerations. *State ex rel. Stephan v. Smith*, 242 Kan. at 382.

Burlington cites three provisions in the Act to illustrate the Act's claimed lack of uniformity. The first is the Act's treatment of the Judge James V. Riddel Boys Ranch. While the Act does distinguish the residents of the Judge James V. Riddel Boys Ranch, it also requires that for the additional weighting the resident must be in the custody of the Secretary of Social and Rehabilitation Services. K.S.A. 72-6407(a). The purpose for the distinction is that, under the Act, persons who are in the custody of SRS and are provided educational services at the state institution do not count in the definition of a pupil. Hence, the definition takes those at the Boys Ranch out of the operation of the definitional exclusion. Second, the provision creates a specific weighting tied to the additional needs of those children in the special circumstance of being at the Boys Ranch. The special provision relative to the Boys Ranch does not involve an issue of lack of geographical uniformity. Given the unique circumstances and needs arising from the Boys Ranch situation, the special weighting is rationally justified.

The second illustration is K.S.A. 72-6435, regarding disposition of ad valorem tax levy proceeds. This provision allows districts which have adopted local option budgets to levy an ad valorem tax to pay principal and interest on bonds for the financing of redevelopment

projects under the authority of K.S.A. 12-1774. That statute gives "any city" the power to issue the bonds. Consequently, the provision is uniform throughout the state. While there will be districts with cities which have issued the bonds and others which have not, this distinction does not arise from lack of uniformity in the wording or application of either K.S.A. 12-1774 or K.S.A. 72-6435.

The third alleged instance of lack of nonuniformity relates to the fact that under the Act each district receives a different amount of money and has a different budget. The new model adopted by the legislature is one of uniform funding per similarly situated pupil. Each district, wherever located, receives the same amount per pupil as a district in which a similarly situated pupil (*i.e.*, weighted pupil) attends school. Consequently, although per pupil spending may vary, that variance is not based on geographic disparities but rational distinctions relating to the needs of the student as recognized by the weighting system. Each district receives a different amount of money, but the difference is derived from the mathematical computation on a uniform per pupil weighted basis.

We conclude the Act does not violate Article 2, § 17 of the Kansas Constitution.

In this appeal, some issues were raised by more than one group of plaintiffs. The same issue thus may have a variety of arguments and numerous sub-issues. We have carefully considered each argument, whether or not specifically referred to in this opinion.

CONCLUSION

The School District Finance and Quality Performance Act represents major changes in the operation and financing of public schools in Kansas. No one contends the Act is perfect. The extraordinarily elaborate review procedures provided by the provisions creating the Kansas Committee on School District Finance and Quality Performance and its inclusion of legislative leadership positions reflect legislative concern over the legislation's impact and possible need for amendment. The record herein reflects the Act has caused much concern and discomfort in a substantial number of districts. Revolutionary change to correct perceived inequity, unfortunately, almost always has such an effect. The legislature, as the people's representatives, studied the whole gamut of public school education and its funding, heard from many interested persons expressing different concerns, altered the existing public policy, and enacted this legislation into law. In so doing, to paraphrase a popular television show's preamble, the legislature decided to boldly go where Kansas has never gone before. If experience establishes that the Act needs further revision, the legislature will have ample opportunity to do so, as it has already done in a number of significant respects. Applying the appropriate standards of review to this legislation, we conclude the Act is within all asserted constitutional limitations and, accordingly, is constitutionally permissible legislation.

The judgment of the district court is affirmed in part and reversed in part, and, as the matter is before us on interlocutory appeals, the consolidated case is remanded to the district court for entry of judgment in accordance with this opinion.

IN THE SUPREME COURT
OF THE STATE OF KANSAS
NO. 93-70931-AS

ROBERT J PERRY
PERRY HAMILL & FILLMORE
P O BOX 7933
OVERLAND PARK KS 66207-7933

UNIFIED SCHOOL DISTRICT NO. 229, ET AL., VS.
STATE OF KANSAS, ET AL.;
UNIFIED SCHOOL DISTRICT 244, COFFEY COUNTY,
ET AL. VS.
STATE OF KANSAS, ET AL;
UNIFIED SCHOOL DISTRICT NO. 217,
ROLLA, KANSAS, ET AL. VS.
STATE OF KANSAS, ET AL.;
NEWTON UNIFIED SCHOOL DISTRICT NO. 373, ET AL.
VS. STATE OF KANSAS, ET AL.;

YOU ARE HEREBY NOTIFIED OF THE FOLLOWING ACTION TAKEN BY THE COURT:

MOTIO [sic] FOR REHEARING AND MODIFICATION BY APPELLANTS. DENIED.

ADD'L DISTRICT COURT CASE NOS. 92CV1175; 92CV1202; 90CV2406

DATE: 02/08/95.

CAROL G. GREEN
CLERK

IN THE DISTRICT COURT OF
SHAWNEE COUNTY, KANSAS
DIVISION THREE

NEWTON U.S.D. NO. 373, et al.

Plaintiffs,

vs.

Case No. 90 CV 2406

STATE OF KANSAS, et al.,

Defendants.

UNIFIED SCHOOL DISTRICT NO. 229, et al.,

Plaintiffs,

vs.

Case No. 92 CV 1099

STATE OF KANSAS, et al.,

Defendants.

UNIFIED SCHOOL DISTRICT NO. 244 COFFEY COUNTY, et al.,

vs.

Case No. 92 CV 1175

STATE OF KANSAS, et al.,

Defendants.

UNIFIED SCHOOL DISTRICT NO. 217, ROLLA, KANSAS, et al.,

Plaintiffs,

vs.

Case No. 92 CV 1202

STATE OF KANSAS, et al.,

Defendants.

ORDER AND SUMMARY DECISION

As the 1992 legislative session began, a great deal of uncertainty surrounded the finance mechanisms for Kansas public schools. Several parties had challenged the constitutionality of the School District Equalization Act (SDEA). In a decision filed October 14, 1991, the Honorable Terry L. Bullock posed and answered ten analytical queries which became rules of law governing the litigation and which raised serious questions regarding the constitutionality of the finance statutes.

The task before the legislature was enormous. In other states, efforts to respond to judicial determinations of unconstitutionality had spanned as long as twenty years without a solution to the problems of inequitable funding. The fiscal issues were arguably the most complex to face the legislature since the last finance formula had been enacted in 1973. The potential social ramifications were immense. Politically difficult decisions had to be made.

The legislature rose to the challenge. By the end of the session, a complex statute had been enacted which radically changed the philosophy and mechanisms of school finance. The legislation resulted in an infusion of money for public school finance, substantially more equality in taxation, a system of accountability to the taxpayer through a mechanism to measure the results deriving from the expenditures, and improved equalization of per pupil expenditures. The model of school finance had changed almost entirely. All of those involved, including the Governor, the legislature, the Kansas State Board of Education, and the Governor's

Special Task Force, had accomplished the Herculean task of creating a new system which solves many of the school finance problems and provides a foundation for continued improvement.

The new paradigm brought controversy, debate, and dissention in many forms, including threats of secession from the State. A manifestation of this controversy was the filing of these four, consolidated suits. Within a few short months of the legislation being passed, ninety-seven plaintiffs sought determination that the new scheme was unconstitutional. The indictments of the legislation were numerous and diverse, covering issues under the United States and the Kansas constitutions.

In summary, evidence presented at trial revealed enormous strides toward equality in taxation. Per pupil expenditures did not narrow as dramatically. In the 1992-93 school year, there was a difference of more than $7,000 from high to low spending districts compared to nearly $8,000 in the last year of the SDEA. The gap will narrow in the 1993-94 year, but will still be significant, probably several thousand dollars. Although there is still a substantial spread between the high and low spending districts, near equal spending has been achieved in the vast majority of school districts. In approximately two-thirds of the districts, the budgeted expenditures in the 1992-93 school year were within $125 of the weighted spending average for the state.

Hence, dollar for dollar uniformity was not achieved. However, the premise of the Act is that equality in educational opportunity does not equate with equality of expenditures. The Act recognizes that the educational

needs of students vary. Because of special needs and circumstances, some students cost more to educate than others and more than the base state aid per pupil of $3,600 allowed under the Act. The Act utilizes commonly recognized cost factors and compensates school districts at a higher or weighted level for students in special circumstances.

The weighted attributes of students are largely, in fact, almost entirely the cause of the disparity in spending. Under the prior statute, one-fourth of the spending disparity was attributable to the wealth of the school districts. Now only about one-twentieth of the spread in spending can be attributed to district wealth. Thus, a more equitable educational opportunity is achieved for all students regardless of the student's residence in a wealthy or poor district. Where disparities exist, the differences reflect educationally recognized cost factors, the compensation for which equalizes educational opportunity.

The Constitution does not require more. Disparate impact may result from legislation if the statutory discrimination is rationally related to a legitimate state objective such as equalization of educational opportunity. Furthermore, nothing prohibits the legislature from fully exercising its constitutional duty to provide for the finance of education rather than to delegate a portion of this duty to local school boards as was done under the SDEA. Hence, while some of the Plaintiffs have attacked the basic underpinnings of the new formula, the basic framework of the School District Finance and Quality Performance Act is constitutional. In addition to indicting the basic premise and framework of the new model,

Plaintiffs also challenged specifics of the Act, raising over seventy separately enumerated objections. A full discussion of those issues is contained in the 158 page Order and Memorandum of Decision filed this date.[1] Of those issues, the court finds merit in only two of the contentions.

First, the Kansas constitution prohibits legislation which imposes a state property tax for a period in excess of two years. Section 27 of the Act provided that the locally elected board of each school district was to levy an ad valorem tax at the rate of 32 mills for the 1992-93 school year, at a rate of 33 mills in the 1993-94 school year, and at a rate of 35 mills in the 1994-95 school year. The third year of this tax levy, the levy for the 1994-95 school year, exceeds the two year limitation and violates the constitution. The provision relating to the mill levy for the 1994-95 school year is severed from the Act. Thus, the legislature must enact a mill levy for the 1994-95 school year and at least biannually thereafter.

The second provision which is unconstitutional is the low enrollment weighting. Low enrollment weighting is one of the factors for which a district will receive a higher or weighted reimbursement per pupil. The justification for the low enrollment weight is to account for the higher costs of operating a district which cannot efficiently,

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[1] The reader interested in all of the arguments and the reasons for the court's rulings is referred to that document. The Order and Memorandum of Decision provides the findings of fact and conclusions of law necessary to support this Order and Summary Decision under 1993 Kan. Ct. Rules Annot. R. 165.

because of smallness, meet the educational needs of students. The record substantiates that there is support for this concept in education finance theory. However, according to the evidence at the trial, education finance theory supports applying the low enrollment to only very small districts. The number for the cutoff varied expert to expert, but was generally within the range of 500 to 700 students.

In constructing the formula, the legislature reviewed historical data of per pupil expenditures during the 1991-92 school year. When graphed, these expenditures leveled somewhere near the enrollment size of 2,000. There was an upward sweep in the curve as district size increased above 10,000 students. Based upon this data, the legislature chose to include districts with enrollments as large as 1,899 and exclude larger districts.

The leveling of the linear curve coincides with a cutoff in the enrollment categories which were utilized in the finance formula under the School District Equalization Act (SDEA). Under SDEA, a significant disparity existed which adversely impacted districts with an enrollment of 1,800 to 9,999.9 students (the category IV districts). It is not coincidental that the leveling of the curve is at the enrollment size where the disparity under SDEA occurred. The legislative record is replete with documentation of the disparity and legislative recognition that the disparity needs correction. The evidence at trial established that this disparity adversely impacted the quality of the education received by students. The impact is stark and disturbing.

Construction of the formula based upon the historical expenditures, which were controlled by the inequities and underfunding of the SDEA formula, perpetuated these disparities. This disparity undermines the equal protection and due process provisions of the Kansas constitution and is, therefore, unconstitutional. Because of the way in which the provision is entwined with the other aspects of the formula, the provision cannot be severed from the statute without significant impact upon the 261 school districts in Kansas which receive funds because of the weight. This provision cannot be severed without destroying the intent of the legislature and, therefore, the entire Act is affected. Consequently, the holding is stayed until July 1, 1994.

Prior to that time, the legislature must reenact the provisions of the School District Finance and Quality Performance Act with modification of the provisions regarding the low enrollment weight. As indicated, the policy of allowing for a low enrollment weight can be justified. Therefore, a low enrollment weight may be reenacted. However, steps must be taken to document a rational basis for the manner in which the formula is constructed.

The determination may be that the base state aid per pupil needs to be increased and a weighting allowed for only a small portion of the schools. At trial, experts faulted the weight since it provided funds to eighty-five percent (85%) of the schools and accounted for approximately eleven percent (11%) of the total funds spent in public schools. The fact that the weight was the rule and not the exception indicated to the experts that the concept

was faulty and that an evaluation of the level of per pupil funding was warranted.

Further, the evidence indicated that simply severing the low enrollment weighting would significantly underfund the programs in many districts, including the larger districts receiving the funding, and would almost certainly result in problems with the adequacy of the financing mechanism. In recognition of this, the special committees reporting to the legislature, including the committee of pupil weights and the Governor's Task Force, recommended a weighting which compensated all schools at the level necessary to adjust for varying efficiencies. There was evidence indicating that all districts experienced special needs because of size. A full implementation of the linear curve, if based upon historical data, must make an adjustment to bring the former category IV schools into parity.

In essence, the legislature must base the mathematical demarcations which result in discriminatory classifications upon a rational basis which does not perpetuate the disparity experienced under the School District Equalization Act.

These two deficiencies in the School District Finance and Quality Performance Act are not an indictment of the entire Act, its premise, or its structure. The Act has the potential of achieving substantial equality of educational opportunity. Dollar for dollar uniformity will not be achieved, but is not mandated by the constitution. What is mandated is equal educational opportunity. To achieve

this educational opportunity, Kansans must divest themselves of the parochial attitude of furthering the education of only those students in the taxpayer's home district. In today's heterogeneous and mobile society, each taxpayer benefits or suffers from the quality or lack of quality of the education received by Kansas students. Having small pockets of well-educated students does not support an economy or society in the 1990's and beyond. More equitably taxing Kansans for the education of our children will benefit all taxpayers in the state.

In reflecting upon the strides toward equality which were achieved, it must be remembered that the role of the court was not to grade the efficacy of the policy decisions made by the 1992 legislature, but to judge the Act's constitutionality. Hence, the concerns expressed by the Plaintiffs should not be ignored simply because the issues did not compel a determination that the Act is unconstitutional. Plaintiffs raise many serious policy questions.

These policy concerns reflect that, although the new school finance formula may be constitutional in most respects, all of the problems of school finance are not solved. A casual perusal of the record in this case reveals many of the problems. Consequently, this decision is not meant to suggest that the levels and mechanisms of funding our children's education cannot be improved.

The individual Plaintiffs in this case made sacrifices to have their voices heard. Many took several days away from family and harvest to express concerns that their children's education was being compromised. Educators, experts, and students plead with this court not to allow our system of education to be mediocre or weak. The

passion and commitment of these voices should not be allowed to become echoes in a courtroom. Plaintiffs' concerns should weigh heavily as taxpayers, voters, and legislators ponder the policy decisions made by the 1992 legislature. Further, the lesson of school finance history must be remembered: underfunding student needs and inequitable funding allow the constitutionality of the system to disintegrate.

Through school finance, perhaps more than through any other tool, we empower our educators to accomplish the school's basic mission of preparing the learners to live, learn, and work in today's society. Parents, educators, legislators, taxpayers, and all Kansans must strive to accomplish these goals.

IT IS SO ORDERED.

/s/ Marla J. Luckert
Marla J. Luckert, District Judge

COPIES TO:

Counsel of Record

IN THE DISTRICT COURT OF SHAWNEE COUNTY,
KANSAS DIVISION THREE

NEWTON U.S.D. NO. 373, et al.

Plaintiffs,

vs.

STATE OF KANSAS, et al.,

Defendants.

Case No.
90 CV 2406

UNIFIED SCHOOL DISTRICT NO.
229, et al.,

Plaintiffs,

vs.

STATE OF KANSAS, et al.,

Defendants.

Case No.
92 CV 1099

UNIFIED SCHOOL DISTRICT NO.
244 COFFEY COUNTY, et al.,

vs.

STATE OF KANSAS, et al.,

Defendants.

Case No.
92 CV 1175

UNIFIED SCHOOL DISTRICT NO.
217, ROLLA, KANSAS, et al.,

Plaintiffs,

vs.

STATE OF KANSAS, et al.,

Defendants.

Case No.
92 CV 1202

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ORDER AND MEMORANDUM OF DECISION

The ninety-seven (97) Plaintiffs in these consolidated suits seek a ruling declaring unconstitutional all or portions of the School District Finance and Quality Performance Act. The legislature, by enacting the law in 1992, systemically altered the paradigm of Kansas school finance. The Act funds the educational interests of the state by specifying a base state aid per pupil which is multiplied by the adjusted or weighted enrollment of the school district. Basing a school district's funding upon the weighted characteristics of the student population shifted the focus of public education finance from school districts and equalization of district expenditures to pupils and equalization of expenditures per weighted pupil. A more controversial modification broadened the tax base for funding the student's education beyond the student's home district to the state boundaries by treating property tax revenues as state funds, not local dollars. Legislative control of a school district's budget and taxing authority increased reciprocally.

By instituting these reforms, the legislature increased funding for education, made property taxes more equitable district to district, and improved the equality of funds for students while weakening the relationship between district wealth and spending. The reform realized in one legislative session had more impact on equality of school finance than some states have achieved after decades of court battles and legislative attempts at reform. Enormous work and concern by the legislative and executive branches was evident in the result.

Many difficult policy decisions were made, some of which were politically volatile. It is only natural to have continued debate regarding these policy decisions. However, as one weighs the arguments of the parties, the trial testimony of the fifty-five (55) witnesses and the boxes of over 180 exhibits, it is critical to place this debate in perspective and, from the outset, to emphasize that it is not the role of the court to pass judgment on the wisdom or efficacy of the policy decisions made by the 1992 legislature. *Blue v. McBride*, 252 Kan. 894, 915, 850 P.2d 852 (1993). Resolution of these consolidated lawsuits hinges upon assessment of whether the policy decisions made by the legislature comply with the constitutions of the United States and of Kansas, not upon determination of optimum educational policy. Such fundamental shifts do not occur without controversy and debate.

The determination of the Act's constitutionality is not a singular issue. Plaintiffs in each of the four suits involved in this action raise a variety of claims, often in a manner inconsistent with claims asserted by another of the Plaintiff groups. The resulting multiplicity of factual and legal issues, the magnitude of these challenges, and the breadth of legal issues involved requires and deserves substantial and lengthy analysis. This Memorandum of Decision supplements the Order and Summary Decision filed this date by more fully discussing the various concerns raised by the Plaintiffs who seek a ruling declaring unconstitutional all or portions of the School District Finance and Quality Performance Act (SDFQPA), K.S.A. 72-6405 through 72-6440, 72-64aOl through 72-64102, 79-3602, 79-3603, 79-3606, 79-3703, 79-32,110 and other scattered sections, codifying 1992 Kan. Sess. L. ch. 280, as

modified by 1993 Kan. Sess. L. ch. 264 (referred to in this decision as "the Act"). For purposes of 1993 Kan. Ct. Rules Annot. R. 165, the Memorandum of Decision and the Order and Summary Decision should be read together.

I. STATUS OF THESE SUITS

One of the four Plaintiff groups began the litigation under the prior act, the School District Equalization Act (SDEA). These Plaintiffs amended their petition in case number 90 CV 2406 to challenge the current Act when Plaintiffs perceived the legislation perpetuated inequities existing under SDEA. The Plaintiffs in case number 90 CV 2406 have been referred to throughout the record of these proceedings and will be referred to in this decision as the Newton Plaintiffs. Three additional suits were filed attacking the Act on other grounds. The Plaintiffs in case number 92 CV 1099 are referred to collectively as the Blue Valley Plaintiffs; those in case number 92 CV 1175 as the Burlington Plaintiffs; and those in case number 92 CV 1202 as the Southwestern Plaintiffs. The identity of the ninety-nine (99) parties in this suit and a summation of their claims are outlined in Appendix A which is incorporated as a part of this decision.

On August 18, 1993, the trial of the first phase of the litigation regarding the Act concluded. The claims made by taxpayers in these consolidated cases were severed and all issues as to damages, if any, were bifurcated from the trial. Therefore, not all issues raised by the Plaintiffs have been concluded.

II. HISTORICAL PERSPECTIVE

The history of school finance and article 6 of the Kansas constitution, the education article, is important to resolution of the arguments of the Plaintiffs, particularly those of Burlington and the Southwestern Plaintiffs. To place these arguments in perspective, a brief review of the historical context of article 6 and of the Act is helpful.

The historical roots of the Kansas school system are grounded in pioneer life. Before Kansas was a state, public schools were sufficiently ingrained in pioneer life that the Organic Act and the Act for the Admission of Kansas Into the Union included provisions providing that certain sections of land be reserved for educational purposes. (The Organic Act, an Act to Organize the Territory of Kansas § 34 (10 Stat. 289, Chapter 54, § 34, May 30, 1984 [sic])). A Territorial Superintendent of Common Schools certified teachers and organized local school districts within walking distance of students' homes.

When passed in 1859, the Ordinance to the Constitution contained eight sections, three of which dealt with elementary public education. The framers of the constitution devoted an entire article to the establishment and finance of a system of "common schools". Section 6 of the Ordinance provided for statewide financing of schools by earmarking five percent of all proceeds from the sale of public lands for the exclusive use of the public schools.

The original article 6 of the Kansas Constitution was adopted by the statehood convention in July 1859, ratified by the electors of the State of Kansas on October 4, 1859, and became law upon the admission of the state into the United States in 1869 [sic] . Section 3 of article 6 provided for

funding of public education. Sale of public lands, unclaimed estates, rents on public lands, "and such other means as the legislature may provide, *by tax or otherwise,* shall be enviably appropriated to the support of common schools". (Emphasis added).

Hence, from its inception, Kansas has financed public schools through taxes and other mechanisms provided for by the legislature, not by local districts. The legislature, utilizing the authority granted under the constitution, gave school districts the power to levy ad valorem taxes within the district.

For the next century, schools were principally funded by local tax revenue generated pursuant to the powers and limitations granted by the legislature. Most of the various school finance acts imposed minimum ad valorem tax levies or floors as well as maximum levies or caps. In 1937, the first state aid provision was enacted when the legislature established minimum levels of support based upon enrollment categories. Before that, less than five percent of school finances came from state aid. Under the 1937 legislation, the state contributions were to vocational education and to school districts too poor to support public schools for the mandated length of the school year. McNish, "The Inequality of Equality: Ruminations on the 1973 Kansas School District Equalization Act," 22 Kan. L. Rev. 239, 245 (1974). The nature and amounts of state aid varied over the ensuing years, but from that point, state aid was always a part of the formula.

After over a century of utilization, the constitutional provisions regarding education, including school finance,

came under scrutiny. Much of the impetus for the scrutiny was the unification mandated by the 1963 school unification law. The law was challenged by 148 school districts. One month after the Kansas Supreme Court rendered a preliminary decision in *Tecumseh School District No. 1 v. Throckmorton,* 195 Kan. 144, 403 P.2d 102 (1965), House Concurrent Resolution Number 537 was passed. The legislature directed a study to be conducted by the Kansas Legislative Council.

An eleven person citizen advisory committee was appointed to conduct research, hold hearings, make findings, and report recommendations. At the time, there was an elected State Superintendent of Public Instruction and an appointed State Board of Education. The Advisory Committee proposed a complete revamping of this structure, noting that "members were impressed by the remarkable growth and changes in Kansas education during the past 25 years". Exhibit 1010: "Implementation of the Education Amendment", Report of the Education Advisory Committee, Publication 256, Kansas Legislative Council, at vi (November 1966). As reasons compelling change, the committee cited: (1) the consolidation of schools which resulted in the number of school districts in Kansas being reduced from 8,624 in 1940-41 to 349 and (2) the large growth in expenditures and the number of Kansas school students. Seeking a structure which would allow Kansas to move into the future, the committee recommended the election of a state board of education and a state board of regents.

In granting the state board supervisory powers, the drafters rejected a proposal of "a uniform system" operated by local boards and instead incorporated language

requiring a "comprehensive system" of local public schools under the general supervision of the state board but "maintained, operated and developed by locally elected boards". The committee stated the amendments "provide constitutional guarantees on local control of local schools". *Id.* at iii. "At the same time, the amendment reaffirms the inherent powers of the legislature – and through its members, the people – to shape the general course of public education and *provide for its financing*". *Id.* at vii (emphasis added).

As passed by the legislature and ratified by the people, article 6 provides, in relevant part:

> **Section 1. Schools and related institutions and activities.** The legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools . . . which may be organized and changed in such manner as may be provided by law.
>
> **Section 2. State board of education and state board of regents.** (a) The legislature shall provide for a state board of education which shall have general supervision of public schools . . . and all the educational interests of the state, except educational functions delegated by law to the state board of regents.
>
> . . .
>
> **Section 5. Local public schools.** Local public schools under the general supervision of the state board of education shall be maintained, developed and operated by locally elected boards. When authorized by law, such boards

> may make and carry out agreements for cooperative operation and administration of educational programs under the general supervision of the state board of education, but such agreements shall be subject to limitation, change or termination by the legislature.
>
> **Section 6. Finance.** . . . (b) The legislature shall make suitable provision for finance of the educational interests of the state. No tuition shall be charged for attendance at any public school to pupils required by law to attend such school, except such fees or supplemental charges as may be authorized by law. . . .

Kansas Constitution, article 6.

At the time of the ratification of article 6, school finance was controlled by the State School Foundation Fund. The Act was passed in 1966, the same year as the resolution calling for study of the constitutional provisions. The State School Foundation Fund Act was the most comprehensive school finance legislation to that point in Kansas history. Fundamental to the legislation was an indexing of a geographic area's ability to fund public education. Money was then distributed commensurate with the "index" and other factors. Each county assessed a levy to finance the state aid. School districts were also empowered to levy ad valorem taxes to fund operating expenses, but were restricted from increasing the budget to no more than 104 percent of the operating expenses per pupil in the preceding school year. 1966 Kan. Sess. L. ch. 402, § 15(b). If a district found this inadequate, a school budget review board could authorize additional expenditures in certain specified situations such as where there had been "unusual

occurrences". The review board consisted of the state superintendent, the state controller, and the state budget director. Hence, districts did not have the ability to raise budgets beyond the statutory limits, even if the voters of the district wished to do so. 1965 Kan. Sess. L. ch. 402, § 15.

In 1967, the legislature authorized school boards to seek voter approval to exceed budgetary limitations. 1967 Kan. Sess. L. ch. 209, § 18. This allowance was latter [sic] repealed. In 1970, the budget limitations were replaced with the so-called "school tax lid". 1970 Kan. Sess. L. ch. 402.

The School Foundation Finance Act and related school finance statutes were determined to be unconstitutional by the District Court of Johnson County in *Caldwell v. State of Kansas,* Case No. 50616 (District Court of Johnson County, Kansas, slip op. August 30, 1972). The court found that the law failed to provide equalization aid sufficient to offset the disparity in either tax effort or per pupil operating expenditures, "thereby making the educational system of the child essentially the function of, and dependent on, the wealth of the district in which the child resides".

Responding to this decision, the legislature enacted the School District Equalization Act (SDEA) in 1973. Seeking resource equalization, SDEA distributed state aid based upon district wealth. The higher the assessed valuation and taxable income of the district, which were the measures of the district's wealth, the lower the state aid. The lower the wealth, the higher the aid. Lower spending

districts were given authority to increase the district budget, upon voter approval, to the level of the median budget per pupil within the district's enrollment category or a maximum of fifteen percent (15%). 1973 Kan. Sess. L. ch. 292, § 35.

The alternative fifteen percent (15%) cap was eliminated in 1978, allowing a district, upon voter approval, to raise the budget to the median budget per pupil in the same enrollment category. 1978 Kan. Sess. L. ch. 296. In 1979, the limitation was lifted entirely and the district was allowed to increase its budget by any amount approved by the voters. 1979 Kan. Sess. L. ch. 221, § 3.

Some of these modifications were prompted by litigation. In 1975, the constitutionality of the SDEA was challenged by numerous parties, including 41 unified school districts. The District Court of Chautauqua County found the statute unconstitutional. The legislature amended the statute, but the court did not hear further evidence and dismissed the case. On appeal, the Supreme Court reversed and remanded for further proceedings. *Knowles v. State Board of Education*, 219 Kan. 271, 547 P.2d 699 (1976). On remand, the case was transferred to this court and the judge presiding over this division, the Honorable E. Newton Vickers, ruled the SDEA was constitutional. *Knowles v. State of Kansas*, 77 CV 251 (District Court, Shawnee County, Kansas, slip op. January 26, 1981).

The SDEA became the subject of litigation again in 1990 as several school districts and individuals, including several of the Plaintiffs in this action, challenged the constitutionality of the statutes. On October 14, 1991, the Honorable Terry L. Bullock issued an opinion answering

ten questions which formed governing rules of law applicable to the challenges. *Mock v. State of Kansas*, 90 CV 918 (District Court, Shawnee County, Kansas, slip op. October 14, 1991). The decision prompted the Governor and legislative leadership to appoint a task force to investigate legislative alternatives which would satisfy the guidelines in the decision. This task force issued a report recommending a new formula granting each district the same base state aid per pupil and then allowing for certain adjustments for student needs and district size.

In 1992, the legislature repealed the SDEA and enacted the School Finance and Quality Performance Act.

III. THE SCHOOL DISTRICT FINANCE AND QUALITY PERFORMANCE ACT (SDFQPA)

A. The Basic Formula

While the legislative history of that enactment is important to the considerations before the court, in order to focus on the relevant legislative history, it is helpful to first examine the Act and then consider the Act's progress through the legislature.

Under the Act, the school board of each school district in the state of Kansas must levy an ad valorem tax upon the taxable tangible property of the district at the rate of 32 mills for the 1992-93 school year, 33 mills for the 1993-94 school year, and 35 mills for the 1994-95 school year and succeeding years. K.S.A. 72-6431(a). Except for portions of the tax which pay for principal and interest on redevelopment project bonds issued pursuant to K.S.A. 12-1774, the proceeds from the tax are deposited

in the general fund of the district. K.S.A. 72-6431(c). On June 1 of each year, the district remits to the Kansas State Treasurer those revenues from the district's "local effort" which exceed the district's "state financial aid". K.S.A. 72-6431(d). The funds which are remitted are often referred to as "recapture" funds.

The funds from the "local effort" are comprised primarily of the ad valorem tax revenues (K.S.A. 72-6431), but may also be comprised of motor vehicle tax receipts; mineral production tax receipts; industrial revenue bonds and port authority bonds in lieu of tax payments; federal PL 874 Impact Aid (in accord with federal law and regulations); unexpended and unencumbered balances remaining in the district's general fund; unexpended and unencumbered balances remaining in a district's "program weighted" funds, i.e., transportation, bilingual and vocational education funds (except for the vocational fund of a district which operates a vocational school); and remaining proceeds of the former general fund and transportation tax levies prior to their repeal in 1992. K.S.A. 72-6410(e).

The district's "state financial aid" is determined by a formula of the legislatively-designated base state aid per pupil multiplied by the district's adjusted or weighted enrollment. K.S.A. 72-6410(b)(1). At the present time, the base state aid per pupil is $3,600. K.S.A. 72-6410(d). The adjusted or weighted enrollment is based upon the district's full time enrollment adjusted by six weighting factors which account for specified student populations to whom higher costs are associated: bilingual students, vocational education students, at-risk students, students

in low enrollment districts, students in new facilities, and students who are transported. K.S.A. 72-6407(e).

B. Adjusted Enrollment

1. Bilingual Weighting

Students qualify for the bilingual weighting when the student is in a bilingual class in which bilingual services are received through an approved program. The approved programs provide substantive instruction in core classes (math, science, social studies, and others) in the student's native language while also teaching English. The goal is to accommodate the student's transition to English-only classes. The additional weighting accounts for the additional staffing demands of operating the program in addition to the English-only classrooms. In the formula, the bilingual education weighting is determined by multiplying the full time enrollment (FTE) in bilingual education programs approved by the state board of education by a factor of 0.2. K.S.A. 72-6413(a). By measuring full time enrollment, a weighting is not provided for those portions of the day in which the student is taking English-only classes.

2. Vocational Education

The vocational education weighting is only available for students enrolled in vocational education programs which are approved by the state department of education. The formula utilizes full time enrollment, thus compensating for only those portions of the day in which the student is participating in the approved program. The full

time equivalent is multiplied by 0.5, which is the statutory weighting factor. K.S.A. 72-6413(b).

3. At-Risk Students

The weighting factor for at-risk students is 0.05. K.S.A. 72-6414. This factor is multiplied by the number of students qualifying for free or reduced meals under the national school lunch program. K.S.A. 72-6407(c). To receive the funds, the district must maintain an at-risk assistance plan approved by the state board of education.

4. Low Enrollment Weighting

Low enrollment weighting is available in districts with a regular enrollment (defined in K.S.A. 72-6407(d)) of under 1,900. K.S.A. 72-6412. During the 1992-93 school year, 261 school districts were under this level. Of the various weighting factors, the low enrollment weighting is the most significant, accounting for approximately eleven percent (11%) of the total general operating budgets adopted by all school districts in the state.

The amount of low enrollment weighting received depends upon whether the district has an enrollment of under 100 pupils, between 100 and 299 or between 300 and 1,899. As opposed to the other weighting factors, no specific weight is specified in the statute. Rather, formulas codified at K.S.A. 72-6412 determine the weighting factors.

5. New Facility

The new facility weighting is based upon the number of pupils in a district attending a new facility (a term not defined) multiplied by 0.25. This weighting is only available during the first two years of operation of a new facility and is available only to those districts which have adopted a local option budget and have budgeted the total amount authorized for the school year. K.S.A. 72-6415.

6. Transportation

The final weighting factor, transportation, is determined by a formula codified at K.S.A. 72-6411. The weighting is available for pupils who reside more than 2.5 miles from school. In general, the weighting is based on cost and density factors associated with the number of pupils transported and the number of pupils per square mile. The computation relies upon utilization of the statistical method of the "curve of best fit" with the purpose of accounting for the varying costs of per pupil transportation in areas populated at different densities.

Once each of the weighting factors is determined for a district, those amounts are added to the $3,600 base state aid per pupil multiplied by the enrollment. This is the amount available to the district unless a district was affected by the cap imposed by the "state transitional aid" provision of the statute or unless the district adopted a local option budget.

C. Transitional Aid

The state transitional aid cap applied in the 1992-93 school year only. The cap restricted increases in each school district's operating budget to no more than ten percent (10%), plus enrollment growth, over the 1991-92 adjusted operating budget. The limitation applied regardless of whether the budget increase was from state financial aid or a combination of state financial aid and the local option budget. K.S.A. 72-641(c) [sic]. It is important to keep this cap in mind in examining the claims of the parties. Because of the cap, statistics regarding the 1992-93 school year are not reliable indicators of the long term impact of the Act on per pupil expenditures.

D. Local Option Budget

School districts may adopt a local option budget in an amount which in no situation could exceed twenty-five percent (25%) of a district's state financial aid. A formula in the statute reduces the twenty-five percent (25%) figure by the same percentage as the percentage increase of any legislatively enacted increases in the base state aid per pupil. Because of the cap imposed through the transitional state financial aid provision, some districts could not utilize the local option budget provisions or, at least, the full twenty-five percent (25%) allowed. K.S.A. 72-6433. Hence, in 1992-93, only 231 school districts were eligible to use the local option budget provisions. Now, all districts may trigger the local option budget authority.

The local option budget provisions are triggered when and if the local school board determines the amount budgeted is insufficient and the adoption of a local option budget would be in the best interests of the district. In the 1992-93 school year no further action was required. K.S.A. 72-6433(b)(1).

Beginning in the 1993-94 school year, the district's adoption of a local option budget is subject to a protest petition and election if five percent (5%) of the electors in a district sign a protest petition within thirty (30) days of the publication of the school board's resolution. If protested, the board must notify the county election officer within thirty (30) days of the filing of the protest petition that an election is requested. If the board fails to do so, the local option budget is deemed abandoned and the board cannot publish a local option budget resolution for nine (9) months. *Id.*

The school board may adopt a local option budget for a period of up to four years in any amount up to the maximum allowed under the statute. The board need not, however, utilize the full amount of the local option budget authorized by the resolution. During the period of a resolution, the board may pass another resolution to increase the amount of the local option budget, following the same procedure as with the original resolution. The new resolution expires at the same time as the first resolution would have expired.

To fund the local option budget, the school district may levy local property taxes. In addition, a district may receive supplemental general state aid if the district's "assessed valuation per pupil" is at or below the seventy-

fifth (75th) percentile of the assessed valuation per pupil statewide for the prior year. The supplemental general state aid is based upon an equalization methodology known as a "guaranteed tax base". A district under the seventy-fifth (75th) percentile of the assessed valuation per pupil statewide for the prior year receives supplemental general state aid in the proportion of the district's assessed valuation per pupil for the prior year to the seventy-fifth (75th) percentile of assessed valuation per pupil statewide for the prior year. *Id.*

E. Quality Performance

1. Outcomes Based Accreditation

"In order to accomplish the mission for Kansas education" (K.S.A. 72-6439), the Act also contains provisions mandating the adoption of a Quality Performance Accreditation (QPA) system for Kansas schools. Section 35 of the Act, codified at K.S.A. 72-6439, requires the state board of education to design an accreditation system "based upon goals for schools which will be framed in measurable terms. . . . " Ten outcomes are defined in the statute. K.S.A. 72-6439.

2. School Site Councils

As part of the effort to meet these outcomes, each district with more than one school site is required to have a school site council composed of the principal and representatives of teachers, school personnel, parents of students, the business community, and other community

groups. The school site council is responsible for providing advice and counsel in (1) evaluating state, school district, and school site performance goals and objectives and (2) determining how the school will meet those goals and objectives. The requirement of maintaining school site councils expires June 30, 1996 unless extended by the legislature during the 1996 session.

The QPA provisions are phased in so that all schools must participate by the 1995-96 school year. K.S.A. 72-6439(c)(e).

3. Other Reforms

The Act also imposes several school reforms. All school districts were required to provide two days of in-service training for its personnel in 1992-93 and three days in 1993-94. K.S.A. 72-6439(c)(g).

The Act also provides for extending the school term. Prior to passage of the Act, the law required a minimum school term for grades 1 through 11 of 180 six-hour days, for grade 12 a minimum of 175 six-hour days, and for kindergarten a minimum of 180 two and one-half-hour days. In the alternative, a school district could opt for a schedule based on a minimum number of hours which were set at 1,080 hours for grades 1 through 11, 1,050 hours for 12, and 450 hours for kindergarten.

The Act, specifically K.S.A. 72-1106, extends the school year as follows:

> 1992-93 school year: grades 1 through 11, 181 six-hour days; grade 12, 176 six-hour days; and kindergarten, 181 two and one-half-hour

days. Under the hours alternative, grades 1 through 11 would have 1,086, grade 12 1,056 hours and kindergarten 452.5 hours.

1993-94 school year: grades 1 through 11, 183 six-hour days; grade 12, 168 six-hour days; and kindergarten, 183 two and one-half-hour days. Under the hours alternative, grades 1 through 11 would have 1,098 hours; grade 12, 1,068 hours; and kindergarten 457.5 hours.

1994-95 school year and thereafter: grades 1 through 11, 186 six hour days; grade 12, 181 six hour days; and kindergarten, 186 two and one-half hour days. Under the hours alternative, grades 1 through 11 would have 1,116 hours; grade 12, 1,086 hours; and kindergarten 465 hours.

F. Kansas Committee on School District Finance and Quality Performance

The Act established a sixteen (16) member Committee on School District Finance and Quality Performance. The Committee is comprised of the chairs and ranking minority members of the House Education, Appropriation, and Taxation Committees and of the Senate Education, Ways and Means, and Taxation Committees. Two additional members are appointed by the Governor to serve at her pleasure and two are appointed by the state board of education to serve at the board's pleasure.

The Committee has the duty to monitor many of the issues raised in this litigation. The Committee shall:

1. monitor implementation and operation of the Act;

2. evaluate the fairness and equity of the costs and weightings;

3. determine whether there should be additional weightings;

4. evaluate the Act's impact upon local control;

5. determine whether the Act furthers the mission of Kansas education;

6. evaluate the educational reform segments of the Act;

7. review other states' systems of finance;

8. review the $3,600 figure for sufficiency in providing "quality educational opportunities";

9. determine mechanisms for decreasing local option budget authority when base state aid or weightings increase;

10. explore alternative funding sources;

11. evaluate criteria for categorical state aid and whether entitlement formulas are equitable; and

12. make an annual report to the legislature, Governor, and state board of education.

There is a sunset date for this committee of June 30, 1994.

G. Tax Provisions

Beginning at section 55 of Senate Substitute for House Bill Number 2892, 1992 Kan. Sess. L. ch. 280, are

ten sections which amend the Kansas tax code. Amendments to K.S.A. 79-32,110, 72-32,119 [sic] and 72-32,120 [sic] changed the tax rates and allowable deductions for income tax computation. 1992 Kan. Sess. L. ch. 280, §§ 55, 56, and 57. Sections 58, 59, and 60 amended the retailers, sales tax provisions, changing the rate and the items to which the tax applies. Section 61 of the Act increased the rate of the compensating use tax to the same rate as the sales tax, 4.9 per cent. The mechanics of the function of the local ad valorem tax reduction fund were amended by section 62 of the Act. Section 63 amended dates and rates of credit in the county and city revenue sharing fund. Section 64 affected transfers from the state general fund of certain sales tax proceeds to the state highway fund. Finally section 65 dealt with the effective dates of some of these provisions.

The Act details the expenditures of portions of the proceeds of these taxes. Under K.S.A. 72-6438, on January 15, March 15, and June 15 of each year, the director of accounts and reports must transfer from the state general fund to the state school district finance fund all revenue attributable to the operation of provisions of K.S.A. 79-32,110 (imposition of income tax), 79-3602, -3603, and -3606 (retailers, sales tax definitions, imposition of tax and exemptions) and K.S.A. 79-3703 (imposition of compensating use tax).

The state school district finance fund may only be used for purposes of financing school districts and for no other governmental purposes. The monies in the fund are distributed as general state aid as provided for under the Act. K.S.A. 72-6438(c) and (d).

H. Severability

The Act also contains a provision regarding severability. The provision states:

> If any clause, paragraph, subsection or section of the school district finance and quality performance act shall be held invalid or unconstitutional, it shall be conclusively presumed that the legislature would have enacted the remainder of the act without such invalid or unconstitutional clause, paragraph, subsection or section.

K.S.A. 72-6440(a).

IV. 1993 AMENDMENTS

The 1993 legislature amended the Act in several respects, four of which are particularly pertinent to the issues in this suit.

First, the 1993 amendments added a declining enrollment provision to assist school districts which have a drop in enrollment when the enrollment in the current school year has decreased from the preceding school year. Under the amendment, a district may add to its enrollment for the current school year one-half of the number of pupils by which the enrollment in the current school year has decreased from the enrollment in the preceding school year. No adjustment may be made for decreases exceeding four percent (4%) of the enrollment in the preceding school year. 1993 House Bill No. 2505, 1993 Kan. Sess L. ch. 264, § 8(d).

Second, the amendments added a mechanism by which school districts could apply to the state board of

tax appeals for additional taxing authority to offset start-up costs associated with opening new school facilities not otherwise covered by the new facilities weighting. (*Id.* at new § 14).

Third, the 1993 legislation changed the Act to require an adjustment to the base state aid per pupil in the event appropriations in any school year for general state aid are not sufficient to pay a school district's computed entitlement. (*Id.* at § 11(d)).

Finally, the amendments adopted a concurrent resolution reconfirming support of school accreditation through QPA, but urging the state board of education to consider certain modifications to the QPA system as specified in the resolution. 1993 Kan. Sess. L. ch. 294.

FINDINGS OF FACT[1]

V. LEGISLATIVE HISTORY

With this summary of the Act it is easier to focus upon the relevant legislative history. As noted earlier, an opinion issued on October 14, 1991, by the Honorable Terry L. Bullock was the impetus for the formation of the Governor's Task Force on School Finance. The Task Force consisted of members of the Governor's staff, the Secretary of Revenue, representatives of the Division of Budget, the chair of the Kansas State Board of Education, four

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[1] Several findings of fact are included in the legal analysis of issues, especially in those areas relating to the low enrollment weighting and local option budget provisions.

representatives, and four senators. Representative Rick Bowden chaired the Task Force.

A. Prior Studies

The Task Force had for its consideration the studies, materials, and recommendations made by prior committees investigating alternatives to the current school finance formula. For example, in 1990 an interim committee of the legislature conducted an extensive study. Many experts, including some who testified at the trial of this case, provided information to the committee. The information included comprehensive reviews of other state financing formulas and the dollar amounts associated with the formulas. Consideration was given to pupil weighting systems. The interim committee requested the Kansas State Board of Education to conduct a study of pupil weightings.

As a result, a special committee on pupil weights was established. Representative Rick Bowden, Senator Joseph Harder, staff from the state board of education, school board members from three Kansas communities, a special education director, teachers from three communities, and administrators from five communities served on the committee. The committee met five times and reviewed cost data regarding the funding of various programs. After studying costs and historical data, the committee prepared a preliminary report. Subsequently, the committee received a report from and met with Dr. Alan Odden, Professor and Director of the Center for Research and Educational Finance, School of Education, University of Southern California at Los Angeles. The experts who

testified at trial noted the respect Dr. Odden commands on these issues. Dr. Odden made several specific recommendations as to appropriate weights. After considering this report and some additional information, the committee of the state board of education issued its report. On July 22, 1991, the state board of education reported to the legislature regarding its study. Those findings will be discussed where relevant to the challenges of the parties.

In addition to the report of the Special Committee on Pupil Weighting, the Governor's Task Force had the benefit of materials regarding "outcomes based accreditation". These materials were developed after 1988 when the Governor's Public School Advisory Council – The Committee on Accountability recommended to the Governor that the state board establish a task force to study the concept and implications of an outcome based accreditation system.

This recommendation came after much criticism of the previous accreditation system for its failure to promote school improvement and its failure to focus on student performance. For many years, schools were accredited on a building basis (or in some instances district wide) on the basis of objective "input" standards set out by state law or promulgated by the state board by regulation.

As a beginning step in the development of an outcome system for Kansas, the state board worked with representatives from the Mid-Continent Regional Education Laboratory (McREL), an educational research group based in Colorado, to determine key issues to be addressed. In November 1989, the state board approved the formation of an outcomes accreditation task force to

develop recommendations for changes in Kansas school accreditation. The task force members included teachers, superintendents, principals, members of local school district boards, representatives of higher education institutions, members of the legislature, and representatives of the state's business community.

As a part of its work, the Task Force reviewed research and reports on effective schools and educational practices, the North Central Association's standards and procedures for outcomes based accreditation, accreditation practices in other states and the existing procedures and regulations for accrediting Kansas schools. The task force was directed by Dr. Max Heim, then superintendent of Junction City USD 475 and currently Professor of Education at the University of Kansas. The task force met monthly to conduct its research. Regional meetings were conducted across the state.

The Task Force's final report was presented to the state board on December 11, 1990. The Task Force found that across Kansas there was a great deal of support for changes in the accreditation system, particularly for a system which would focus on accountability. On receipt of the report, the state board conducted various work sessions and, on March 12, 1991, adopted its own Quality Performance Accreditation (QPA) system. The state board also adopted assessment measures.

B. The Governor's Task Force

Hence, when the Governor's Task Force began its work it had the pupil weightings and the outcomes based accreditation studies material available. In addition, the Task Force reviewed statistical data relating to features of the school funding system under SDEA. The data not only provided information on necessary levels of funding, but also gave a sense of the wide diversity in Kansas school districts. The following table illustrates, by way of example only, some of the categories of information provided regarding the 1990-91 school year.

	LOW*	MEDIAN*	HIGH*
September 20, 1990 FTE Enrollment	74.50	555.00	44,773.10
1990-91 Pupil/Teacher Ratio	5.70	13.30	19.90
1990-91 Teacher/Administrator Ratio	5.30	10.80	21.30
1990-91 General Fund Budget Per Pupil	2,610.35	4,783.97	10,554.18
1990 Assessed Valuation	4,753,921.00	17,915,077.00	1,481,198,424.00
1990 Assessed Valuation Per Pupil	7,974.00	30,295.00	580,749.00
Taxable Income Per Pupil	13,017.00	30,670.00	145,045.00
1990-91 General Fund Mill Rate	7.31	51.55	86.62
1990-91 Square Miles	10.00	228.50	992.00
1999-91[1] Students Per Square Mile	.20	2.10	408.90
1990-91 Number of Attendance Centers	2.00	3.00	96.00
1990-91 Number of High Schools	1.00	1.00	8.00
1990-91 General State Aid Per Pupil	.00	2,040.05	3,778.38
1990-91 Income Tax Rebate Per Pupil	118.63	315.73	1,522.92
1990-91 General State Aid and Income Tax Rebate Per Pupil	148.74	2,355.37	4,003.43
1990-91 General Fund Property Tax Per Pupil	377.59	1,623.10	9,461.45

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* Does not include Fort Leavenworth, USD 207.

[1] [sic]

Also, included in the statistical information was material on mill rates in districts and fund levies. The 1991-92 general fund mill rate for school districts ranged from a low of 9.12 for Plaintiff Burlington to 97.84 for Parsons. The estimated total mill rates for the 1991-92 school year ranged from 15.53 for Burlington to 110.85 for Olathe. The estimated assessed valuation per pupil for that school year ranged from a low in Galena of $8,182 to a high in Plaintiff Burlington of $554,356. Similar statistical analysis for the 1990-91 school year was also provided.

In addition to the statistical information, the Task Force considered a variety of other information. Experts testified regarding options in the construction of a school finance formula. In doing so, policy concerns and practical considerations were highlighted. In addition, the Committee received two attorney general's opinions regarding the constitutionality of a statewide property tax and of allocating and distributing funds raised from one levy for multiple purposes. (Att'y Gen. Ops. 91-142 and 91-37).

On November 21, 1991, the Task Force issued its report. Among the primary recommendations were the utilization of a uniform statewide property tax and a formula based upon a base amount per pupil plus weightings for special education, vocational education, bilingual education, transportation, and enrollment. No specific dollar amounts were recommended.

C. Special Committee on Education

Simultaneous to the Task Force meetings, a special committee on education conducted hearings which were primarily focused on education reform issues. Experts and others testified before the committee. *See* Exhibit 1004.

D. House Consideration

Several bills regarding school finance were introduced prior to or early in the 1992 session of the legislature. House Bill 2892, which generally followed the recommendations of the Task Force, became the focus of the considerations. The bill differed from the Task Force's recommendations in at least two respects. First, special education was not made a weighted category but remained as a separate categorical aid program. Second, low enrollment weighting was assigned only to districts with enrollment of less than 2,000. Thus, the legislation did not fully implement a linear scale driven from 1991-92 adjusted actual expenditures and did not impact all districts as the Task Force had recommended.

House Bill 2892 added to the Task Force's recommendations the specific numbers necessary under the formula. The bill provided for base state aid per pupil of $3,675. Bilingual weighting was set at 0.2, twice the amount the Special Committee on Pupil Weighting had determined to be the cost of the programs.

Vocational education was set at a 0.5 weighting, the amount determined by the Special Committee on Pupil

Weighting to reflect the actual cost of vocational education at vocational technical schools. The transportation weighting was basically the formula finally enacted and described above. The at-risk weighting was based upon students who qualify for free meals under the national school lunch program and was weighted at 0.05. A local option budget provision was capped at ten percent (10%). Districts qualified for state aid at a rate of equalization designed to treat each district as if its assessed valuation per pupil were equal to that of the district at the seventy-fifth (75th) percentile of assessed valuation per pupil statewide.

Related tax provisions were introduced the same day (February 7, 1992), but were in a separate bill, House Bill 2891. Originally neither bill contained the quality performance accreditation provisions, the adjustments to the school year, or the increase in sales and income taxes.

The first committee to conduct hearings was the House Committee on Education. Because of the high level of public attention and the large number of people interested in testifying, some hearings were conducted at the Kansas Expocentre. Educators, school board members, business leaders, taxpayers, parents, and school finance experts testified.

The Kansas Association of School Boards, which has historically maintained a position of ensuring locally elected boards of education maintain the ability to make decisions about local schools, supported House Bill 2892. The United School Administrators, a group comprised of administrators and educators, also supported the bill.

Several other groups and individuals spoke in favor of the bill.

On March 2 and 9, 1992, House Bill 2892 was amended, on the later date to add fifteen sections concerning tax increases and adjustments. According to the testimony of the legislators, the revenue package was placed in the bill with the distribution formula in an effort to allow legislators to see where the money would be coming from and where it would be distributed. While the legislation was in the House, the quality performance accreditation provisions were added to the bill.

The bill was approved by the House on March 11, 1992.

E. Senate Consideration

The Senate referred House Bill 2892 to the Education Committee on March 16, 1992. On April 4, 1992, the Senate Committee of the Whole took action making several amendments. A new bill entitled "Senate Substitute for House Bill No. 2892" was assigned to the education committee. The new bill reduced state aid per pupil, increased local option budget authority and added provisions which stated the tax changes were not effective if the educational changes and school finance formula were not implemented.

Subsequently, on several occasions, the Senate considered the legislation with numerous amendments being offered. Each time the legislation failed to pass. On April 9, 1992, the Senate Committee on Education recommended that House Bill 2892 be amended by

substituting a new bill entitled "Senate Substitute for Senate Substitute for House Bill 2892". Again the bill failed. On April 11, from the floor, amendments were added to the legislation. Still, the bill did not pass the Senate. On April 29, sections 37 and 38 were added and the bill passed. Sections 37 and 38 establish the Committee on School District Finance and Quality Performance and defines the Committee's duties.

The House failed to concur with the Senate Substitute for Senate Substitute for House Bill 2892. A conference committee was appointed. The first conference committee report was rejected by the Senate. The second conference committee report was approved by the Senate on May 5, 1992 by a vote of 22 to 18, and by the House on May 5, 1992 by a vote of 91 to 34.

F. Passage of Legislation; Legislative Goals

The legislative history reveals that during the legislation's course through the legislature there were several changes in the dollar amounts of the base state aid per pupil, the ad valorem tax levy, and the local option budget caps. Legislators who testified at the time of trial indicated that the state board of education provided computer printouts of the impact of the various dollar amounts in each of these categories. Legislators then made determinations of whether the amounts were sufficient, basing the judgment upon past spending levels and estimated expenditures for the current year, usually of the schools in the legislator's home district. Some of the legislators testified there was an "auction"-type atmosphere attendant to these proceedings.

The course of the legislation as well as the testimony of the legislators revealed there were four major goals: (1) more equitable funds for students regardless of district wealth; (2) more equitable property taxes from district to district; (3) increased funding for education, and (4) increased accountability and measurements to assess the outcomes resulting from the funding, i.e., measures to improve schools and accreditation. (*See Blue v. McBride*, 252 Kan. 894, 850 P.2d 852 (1993) (legislator's testimony admissible and relevant to determinations regarding the concerns of the legislature)). Some legislators apparently felt the issues were so entwined they would not support the legislation unless all the components were contained in one bill.

VI. THE RESULTS UNDER THE ACT

A. 1992-93 School Year

In the first year under the Act, expenditures from all sources for all purposes by the 304 school districts in Kansas increased. The following provides a comparison of 1991 actual expenditures to 1992-93 estimated expenditures.

FUND	ACTUAL EXPENDITURES 1991-92	ESTIMATED EXPENDITURES 1992-93
General	$1,510,365,898	$1,665,057,535
Supp. Gen.	0	98,796,335
Adult Ed.	1,731,304	2,312,338
Adult Suppl. Ed.	722,886	867,463
Bilingual Ed.	2,404,052	3,674,371
Capital Outlay	103,234,497	113,557,946
Driver Training	5,312,708	5,843,978
Ed. Excellence	4,080,648	2,154,631
Food Service	103,701,940	114,072,134
Inservice Ed.	4,155,529	5,194,411
Parent Ed.	1,482,760	3,334,202
Special Ed.	149,606,713	169,758,737
Technology Ed.	550,736	5,179,767
Transportation	87,164,336	92,394,196
Vocational Ed.	20,926,348	25,733,954
Area Voc. School	29,543,901	36,309,454
School Retirement (Old)	467,814	514,593
Bond & Interest Pay.	68,536,216	69,116,194
Special Assessment	1,155,282	2,522,221
Temporary Note	72,979	8,714
Coop-Special Ed.	81,196,358	92,133,507
TOTAL	$2,176,412,905	$2,508,536,681

In terms of general fund operations (which excludes federal and state categorical programs such as Chapter 1 and special education), school districts in Kansas adopted 1992-93 general fund budgets (including adopted local option budget spending) totaling approximately $1,937,882,000. This figure comprises base operating budgets of approximately $1,839,086,000 and local option budgets of approximately $98,796,000.

The revenue to pay for these budgeted general fund expenditures is derived from the following sources:

Local Levies*	$749,077,000
General State Aid	959,873,000
Supplemental State Aid	25,022,000
Unexpended Cash Balances	194,950,000
Federal Funds Providing General Aid (PL 874)	8,960,000
Total	$1,937,882,000
* Includes ad valorem property taxes, motor vehicle property taxes and mineral production taxes.	

A comparison of per pupil expenditures for 1991-92 and 1992-93 (with adjustments for the differences in categorical aid and weighting) shows that per pupil expenditures for Kansas were about $400 below average for the nation during the 1991-92 school year, placing the state below the median in that measurement. However, in 1992-93, Kansas moved from twenty-eighth to twenty-fifth in the national ranking with per pupil expenditures about $270 below the national average of $5,216. Additional revenue resulting from the new School District Finance and Quality Performance Act raised the state's ranking above the median for all states for the first time in many years.

As a result of the Act, as compared to the old law, school district expenditures went up a little over nine percent (9%), with only about 1.75 percent (1.75%) of that due to growth in enrollment. Hence, the goal of increasing funding to education was accomplished.

The Act also affected the ad valorem mill levies across the state. Of the 304 school districts in Kansas, 289 experienced decreases in the mill rate between the 1991 general mill rate and the 1992 total mill rate (general plus supplemental general). The decreases ranged from a high of 61.85 mills in Parsons USD 503 to 0.12 decrease in Plaintiff Elkhart USD 218. The following reflects the mill rates for the fifteen districts whose rates increased:

District Name	1991 General	1992 General	1992 Supp. General	1992 Total	Difference (4 - 1)
Prairie View USD 362	37.14	32.00	5.70	37.70	0.56
Cherryvale USD 447	36.72	32.00	6.05	38.05	1.33
Satanta USD 507	30.00	32.00	0.00	32.00	2.00
Deerfield USD 216	29.67	32.00	0.00	32.00	2.33
Holcomb USD 363	27.26	32.00	0.00	32.00	4.74
Paradise USD 399	50.65	32.00	23.72	55.72	5.07
Lakin USD 215	29.84	32.00	3.60	35.60	5.76
Ulysses USD 214	31.19	32.00	5.99	37.99	6.80
Shawnee Mission USD 512	37.95	32.00	17.89	49.89	11.94
Kaw Valley USD 321	23.94	32.00	4.57	36.57	12.63
Rolla USD 217	22.26	32.00	7.00	39.00	16.74
Ft. Leavenworth USD 207	25.00	32.00	10.06	42.06	17.06
Hugoton Public USD 210	18.36	32.00	4.34	36.34	17.98
Moscow Public USD 209	17.77	32.00	8.01	40.01	22.24
Burlington USD 244	9.12	32.00	0.97	32.97	23.85

The following charts reflect the Plaintiff districts, 1992-93 levies and the assessed valuation per pupil with a comparison to statewide statistics:

School Districts	92-93 Operating Mill Levy (Inc. LOB)	92-93 Total Mill Levy*	92-93 General Fund Budget (Inc. LOB)	92-93 Assessed Valuation	92-93 AV/Pupil
Blue Valley USD 229	58.66	77.84	$49,428,000	$592,459,109	55,975
Burlington USD 244	32.97	37.75	5,066,080	511,823,516	538,138
Rolla USD 217	39.82	42.88	1,751,740	62,528,803	301,634
Elkhart USD 218	39.87	42.97	3,207,800	44,534,323	81,134
Lakin USD 215	35.62	38.62	4,082,154	129,980,344	184,841
Satanta USD 507	32.00	32.00	2,086,920	92,602,700	257,946
Holcomb USD 363	32.00	40.51	3,800,520	114,510,715	161,510
Johnson USD 452	34.57	36.47	3,153,893	68,105,823	130,596
Ulysses USD 214	37.89	40.35	7,733,120	224,911,971	133,638
Hugoton USD 210	36.35	36.35	5,692,425	221,049,332	215,343
Moscow USD 209	40.00	44.03	1,566,090	65,397,577	389,271
Newton USD 373	36.49	40.47	13,139,150	67,407,454	19,767
Hays USD 489	44.37	52.82	13,940,555	102,992,316	30,023
Dodge City USD 443	32.00	39.43	15,764,760	119,741,744	28,300
Winfield USD 465	37.99	55.71	9,828,679	58,021,533	23,235
Pittsburg USD 250	32.00	40.66	10,264,626	57,381,049	19,765
Leavenworth USD 453	32.00	39.21	15,548,902	95,132,398	22,699

* = excludes recreation commission levy

92-93 Statewide			
	Low	Median	High
Operating Fund Levy (Inc. LOB)	32	32.00	66.05
Total Mill Levy*	32	39.82	78.99
General Fund Budget (Inc. LOB)	$597,240	$3,096,867	$173,152,800
1992-93 Assessed Valuation	$719,538	$17,878,047	$1,535,888,436
1992-93 AV/Pupil	$396	$28,876	$538,138

* = excludes recreation commission levy

See Exhibit 7022 for a comparison of the Plaintiff school districts' assessed valuation per pupil with the rest of the state.

The difference between the high and low mill levies in the state, which had been almost 90 mills in 1991-92 under SDEA, narrowed to less than 40 mills in 1992-93. Thus, the Act made significant progress toward taxpayer equity.

Further, the evidence before the court demonstrated no strong correlation between the disparities in mill levies and the disparities in assessed valuation per pupil. In 1992-93, only five percent (5%) of the variance in per pupil spending was attributable to school district wealth measured by the assessed valuation in the district for each student enrolled. Under SDEA, twenty-five percent (25%) of the variation in spending among school districts was attributable to school district wealth.

A similar narrowing of expenditures did not result from the Act. In the 1990-91 school year, the range of general fund budget per pupil among school districts in Kansas extended from a low of approximately $2,610 to a high of approximately $10,554. For the last year of the SDEA (1991-92), the general fund budget per pupil among school districts in Kansas ranged from $2,720.28 to a high of $10,483.50. In the first year under the Act, the 1992-93 school year, the range of general fund budget per pupil among school districts in Kansas extended from a low of $3,061.71 to a high of $10,157.14. Hence, the disparity in per pupil spending narrowed, but only slightly.

B. 1993-94 School Year

At the time of trial, school districts were in the process of preparing budgets for the 1993-94 school year as required by K.S.A. 79-2929 and 79-2929a. Those budgets were not submitted to the state board until August 25, 1993. Therefore, individual school district budget figures for the 1993-94 school year are not a part of the record in this case.

However, the Kansas State Board of Education and Kansas Legislative Research Department projected aggregated statewide estimates for the 1993-94 school year. Those projections estimate general fund spending (including base budgets and local option budgets) will total approximately $2,042,253,000. This figure comprises a base budget of approximately $1,899,770,000 and local option budget spending of approximately $142,483,000. These figures do not include categorical aid programs such as special education.

Based upon the projections referenced above, base operating budgets statewide will increase by approximately $60 million in 1993-94, and local option budget spending will increase statewide by approximately $43,687,000. Total spending for general operations for unified school districts will increase by approximately $103 million. Since the transitional cap will no longer apply, the budget per pupil will be at least $3,600 per pupil in all districts.

VII. THE PLAINTIFF DISTRICTS

Many of the characteristics of the Plaintiff school districts are summarized in Appendix A. Other findings relevant to each district will be included in the discussions of various issues.

Each school building in each Plaintiff school district is accredited by the State of Kansas and is in good standing pursuant to state law and accreditation regulations. No schools in the Plaintiff districts have been cited by the state board as "accredited advised" or "accredited warned or dropped" for the accreditation list as provided by K.A.R. 91-31-2(3). No Plaintiff district has been unable to provide state-mandated offerings or programs.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

VIII. GENERAL PARAMETERS OF CONSTITUTIONAL ANALYSIS

Against this backdrop, the four Plaintiff groups raise a variety of specific allegations as to why the Act is unconstitutional. There are a few well-grounded rules which govern these considerations.

1. The Act is protectively shrouded with a presumption of constitutionality. *Jurado v. Popejoy Construction Co.*, 253 Kan. 116, 123, 853 P.2d 669 (1993). Only if the statute clearly appears unconstitutional, can it be stricken. *Blue v. McBride*, 252 Kan. 894, 915, 850 P.2d 852 (1993). If the statute is not clearly unconstitutional, but there lingers a doubt, the doubt must be resolved in favor of constitutionality. *Id.*

2. "Courts do not substitute their social and economic beliefs for the judgment of the legislative bodies and are not concerned with the wisdom, need, or appropriateness of legislation." *Blue v. McBride*, 252 Kan. at 915 (citing *Ferguson v. Skrupa*, 372 U.S. 726, 730, 10 L. Ed. 2d 93, 83 S. Ct. 1028 (1963)). Perhaps because of the limited success of attacks upon the facial constitutionality of those statutes enacted to remedy unconstitutional school finance systems (*see Abbott v. Burke*, 119 N.J. 287, 575 A.2d 359 (1990) as an example of one of the few such cases), some have urged a more active role by the courts and a broader scope of review when the remedial legislation is being reviewed. Note, *Unfulfilled Promises: School Finance Remedies and State Courts*, 104 Harv. L. Rev. 1072 (1991). In part, the argument is based upon underrepresentation of the school finance plaintiff's interests in the legislatures. The frequent argument is that property-rich districts have a disproportionate legislative influence which impedes the ability of poorer districts to influence change. *See Edgewood Independent School District. v. Kirby (Edgewood I)*, No. 362,516, slip op. at 67 (Tex. Dist. Ct. August 27, 1987) (finding that "individuals of political influence who could impact the political process by and large reside in districts of above average wealth"), *rev'd*, 761 S.W.2d 859 (Tex. Ct. App. 1988), *rev'd*, 777 S.W.2d 391 (Tex. 1989). In this case, the Southwestern Plaintiffs argue their political influence is limited because of the sparsity of the population in the southwest corner of the State. Hence, while technically represented, these Plaintiffs view themselves as functionally powerless to effect change when their

interests are adverse to districts such as those in Sedgwick County where the one county sends several representatives and senators to Topeka.

Voter unwillingness to pay the taxes associated with school finance and the corresponding undervaluation of the collective benefits of a better-educated citizenry also create a political pressure which may undermine legislative remedies. This is similar to the Newton Plaintiff's theory of school finance gravity: the lower the assessed valuation per pupil in a district, the greater the impact of taxes upon the individual taxpayer, the greater the difficulty in passing tax levies for education.

Based upon these arguments the Plaintiffs and commentators urge the court to utilize a broad scope of review. As persuasive as these arguments may be, they collide squarely with the well-established principles and espoused philosophy oft-repeated by the Kansas Supreme Court. Separation of powers and majoritarian constraints result in the conclusion that the courts cannot substitute policy for the legislative judgment as long as that judgment is constitutional.

3. It is the duty of the court to declare legislation unconstitutional when it does fail to meet the requirements of the constitution. *Blue v. McBride*, 252 Kan. at 915.

Within the framework of these parameters, the Court must evaluate the claims of the parties.

IX. DO THE TAX AND BUDGET PROVISIONS OF THE ACT VIOLATE ARTICLE 6, SECTION 5 OF THE KANSAS CONSTITUTION BY ENCROACHING UPON THE POWER OF THE LOCAL SCHOOL BOARD TO MAINTAIN, DEVELOP, AND OPERATE LOCAL SCHOOLS?

The central, but not the sole, focus of the claims by the Southwestern, Burlington, and Blue Valley Plaintiffs is that the Act violates section 5 of article 6 of the Kansas Constitution. The section provides:

> **Section 5. Local public schools.** Local public schools under the general supervision of the state board of education shall be maintained, developed and operated by locally elected boards. When authorized by law, such boards may make and carry out agreements for cooperative operation and administration of educational programs under the general supervision of the state board of education, but such agreements shall be subject to limitation, change or termination by the legislature. When authorized by law, such boards may make and carry out agreements for cooperative operation and administration of educational programs under the *general supervision* of the state board of education, but such agreements *shall be subject to limitation, change or termination by the legislature.*

Id. (emphasis added).

A. Funding Authority

The Southwestern, Burlington, and Blue Valley Plaintiffs argue section 5 grants local control over the district's

budget, taxing, funding, and fiscal accountability. Plaintiffs argue that the Act is unconstitutional because it impinges upon this local control by imposing a uniform statewide tax levy, limiting the budget authority of the district, and restricting the local option budget.

Indeed, the Southwestern, Burlington, and Blue Valley Plaintiffs consistently testified that they believed their ability to exercise local control had been emasculated by the Act. The witnesses conceded that the local school district retained the right to manage the schools on a day-to-day basis, including the right to make decisions about curriculum, purchasing text books, hiring and firing teachers, disciplining students, evaluating teachers, controlling attendance boundaries, supervising extracurricular activities, and exercising eminent domain. However, many of these witnesses, including several of the experts, testified that these rights were hallow if the local school board did not have the ability to fund the programs, the curriculum, the negotiated contracts, and the other matters over which the locally elected board has control.

The testimony of the experts, including those testifying for the defendants, was relatively consistent on one point: under education theory or philosophy "local control" is synonymous with "fiscal control". Relying upon this education tradition, courts in other jurisdictions have recognized that the concept of local control means the ability to determine how money will be raised and how the money will be spent. *E.g., Hornbeck v. Somerset County Board of Education*, 295 Md. 597, 458 A.2d 758 (1983). At least one state determined that collection of taxes in one school district for the benefit of another district violates

the local control doctrine. *Buse v. Smith*, 74 Wis. 2d 550, 247 N.W.2d 141, 155 (1976).

Additionally, review of the many cases cited by the Plaintiffs reveals strong judicial support for the doctrine of local control. In fact, when reviewing the Unified School District Act of 1963, the Kansas Supreme Court recognized "the traditional element of local control of the schools" as a factor to be considered in determining the legislative intent. *Hand v. Board of Education of Unified School District No. 247, Crawford County, Kansas*, 198 Kan. 460, 465, 426 P.2d 124 (1967). Also revealed is a judicial recognition of the doctrine's importance in assuring that patrons remain invested in the educational system. However, review of the cases also reveals that the analysis of this issue in Kansas is quite unique. The 1966 constitutional amendment outlines the role of the legislature, the state board, and the local boards of education. Because these provisions are unique, the cases from other jurisdictions are not persuasive.

1. The History of Article 6 and School Finance Supports the Determination That the Legislature Controls Funding

In creating the new paradigm of school finance, the legislature tightened the tension inherent in the powers constitutionally bestowed upon the legislature, the state board of education, and locally elected boards. The constitutional provisions granting powers to each of these entities must be construed together. *State v. Smith*, 155 Kan. 588, 596, 127 P.2d 518 (1942) (construing article 6, section 2 with section 7 of the bill of rights). Article 6 defines the powers and duties of several groups, not just

of locally elected boards. Some powers are overlapping. For example, the provisions specify that the legislature has responsibility for "establishing and maintaining public schools. . . . " Section 1. Concurrently, locally elected boards maintain, develop, and operate the schools. Section 5. The Kansas State Board of Education "shall have the general supervision of public schools". Section 2. Other powers are granted to only one entity. The legislature is also charged with making: "suitable provision for the finance of the educational interests of the state". Section 6.

No appellate court has considered the inherent tension between the locally elected board's duties to maintain, develop, and operate the local schools and the legislature's duty to "make suitable provisions for finance. . . . " The Kansas Supreme Court has determined, however, that whatever powers locally elected boards have over raising funds is granted by the legislature. In 1930, the Court stated:

> Since the constitution places the responsibility for providing a system of education upon the legislature, it logically follows that a school district created by the legislature has no inherent power of taxation. It must look to the legislature for its right to raise funds by taxation, and has only such power to levy, assess and collect taxes as is clearly granted by the legislature.

Chicago, Rock Island & Pacific Railway Company v. Nichols, 130 Kan. 509, 287 P. 262 (1930). Even though this conclusion preceded the current article 6 by 36 years, the statement is consistent with the expressions of intent made at the time sections 5 and 6 of the current article were

proposed to the legislature. Regarding section 6, the Committee of the Kansas Legislative Council which proposed the amendments, stated in the committee report, publication 256 (Exhibit 1011):

> "Financing" is one of the major ways to effect changes in educational policy. The provisions of Section 6 add to the constitution new provisions on school finance. Legislative implementation of these new powers would make changes in policy and procedure of almost equal importance to changes in the structure and powers of the two state educational boards. These provisions were proposed by the education advisory committee to enable the state to "take appropriate action as necessary" to finance public education. Costs have risen markedly in the past and will apparently continue to increase. Because of the growing importance of education to the welfare and economic growth of Kansas, the advisory committee believed it would be desirable to state in the constitution certain specific legislative powers. These would give the legislature considerable flexibility in taking whatever appropriate action might be necessary in financing educational programs.

Exhibit 1011 at 30. The report continues with an explanation that there was disagreement among the committee members regarding the article. However, the disagreement arose because some felt the legislature already had the power and that "the provisions of sections 6(b) and (d) would merely add unnecessary details to the constitution which would tend to limit rather than enlarge legislative powers in the long run". *Id.*

The expressed intent, therefore, is of strong legislative powers springing from the duty to provide for the finance of education. Included in these inherent powers is the duty to delegate to local political subdivisions. In turn, the powers of the local subdivision are limited to the legislative grant of authority. This conclusion is consistent with the Supreme Court's statement that the locally elected school board has only the taxation powers granted by the legislature. This is also consistent with the history of school finance since the time of statehood which, as discussed above, has been dependent upon legislative action.

The Southwestern Plaintiffs argue that the legislative intent behind the 1966 amendments was to give unfettered fiscal control to locally elected boards. To bolster this argument, the Southwestern Plaintiffs cite the repeal in 1967 of all spending limitations or caps on local school district spending. From at least 1933 until 1965, the school district finance statutes allowed a local district to exceed the maximum levy allowed by the legislature, but limited the local school's budget increases to twenty-five percent (25%) of the maximum levy allowed the school district for that particular year. 1933 Kan. Sess. L. ch. 309, § 20, codified at K.S.A. 79-1964. While other changes were made to the finance mechanism, this provision remained operative. *See* 1941 Kan. Sess. L. ch. 370; 1945 Kan. Sess. L. ch. 359, § 1; 1949 Kan. Sess. L. ch. 377, § 3; 1959 Kan. Sess. L. chs. 381 through 383.

With the enactment of the School Foundation Fund Act in 1965, districts were allowed to increase budgets by no more than 104 percent of the amount legally budgeted in the preceding year, unless an exception was recognized

by the school budget review board. 1965 Kan. Sess. L. ch. 402, § 15. However, in 1967 with the first school finance legislation after the amendments to article 6, the legislature removed the caps on spending, allowing school districts to expend any amount approved by the voters. 1967 Kan. Sess. L. ch. 409, § 18. The Southwestern Plaintiffs argue that this is a clear indication that, through the amendments to article 6, the legislature intended to give full fiscal control to the local school districts.

Caps were reimposed in 1973 on tax levies (1973 Kan. Sess. L. chs. 292 and 293) and upon spending in 1978 (1978 Kan. Sess. L. ch. 296). Hence, while there was unfettered spending authority for a few years after the constitutional provision, that lack of constraint was short-lived. It must also be remembered that the removal of the caps occurred just prior to the finance system being found unconstitutional. When the reform legislation was enacted, the caps followed. This substantiates that there is a long history in Kansas of legislative control of the mechanisms and amounts of funding and of taxation. The fact that there was a short-lived period without a cap after the 1966 amendments, especially when viewed in light of the statements of intent about legislative control of financing and the entire history of school finance, does not require a conclusion that the caps on spending violate section 5 of the constitution.

2. Is Section 5 Self-Executing?

The Burlington Plaintiffs argue that section 5 is self-executing and, therefore, the local school boards have the power to do whatever is necessary to maintain, develop,

and operate local schools, including exercising full budget authority. The Burlington Plaintiffs argue that the granting of these rights gives the local boards the concomitant obligation to keep unimpaired the expenditures which the local board views as necessary to maintain, develop, and operate the local schools.

In asserting this argument, Burlington relies upon *State ex rel. Miller v. Board of Education of Unified School District No. 398, Marion County, Peabody*, 212 Kan. 482, 511 P.2d 705 (1973). In the *Peabody* decision, the Kansas Supreme Court determined that article 6, section 2 was self-executing. Burlington argues that this reasoning must also mean that section 5 is self-executing and that the local boards have inherent powers to finance schools as they deem necessary.

However, the *Peabody* decision does not support this conclusion. At issue in *Peabody* was a regulation of the state board of education requiring local boards to adopt resolutions regarding conduct of persons employed by and attending vocational-technical schools, requiring the local board to have the policies reviewed by legal counsel, and requiring the local board to submit the policy to the Kansas State Board of Education. The Peabody school board took the position that the state board did not have this authority because the legislature had not given it the specific power and because the regulation encroached upon the local board's authority to operate, maintain, and develop the school. The Kansas Supreme Court ruled against the Peabody board. In doing so, the Court stated:

> There can be little doubt that the 1966 amendment made significant changes in the area of public schools and educational institutions. A

> greater sense of obligation on the part of the state to participate in the support of public schools and in the general field of public education seems to be implicit in the language of article 6, § 1. . . .

212 Kan. at 485.

The Court also emphasized that the local board is subject to the supervision of the state board of education. The reasoning of the Supreme Court clarifies that the state is in the ultimate supervisory power.

Further, in *Unified School District 380, Marshall County v. McMillen*, 252 Kan. 451, 845 P.2d 676 (1993), the Supreme Court specifically rejected the contention made by Burlington. The Court held:

> The local school board's duties under § 5 of article 6 are not self-executing but are dependent upon statutory enactments of the legislature.

Id. at 464, 845 P.2d at 685.

3. Impact of McMillen

The Southwestern Plaintiffs rely upon another part of the holding in *McMillen* to assert that the legislature cannot hamstring the local school boards. *McMillen* concerned a challenge to a statute requiring a due process hearing upon the termination of a teacher. The Court considered the tension between the legislature's constitutional power to "establish and maintain" schools (article

6, § 1) and the local district's power to "establish, maintain and develop" schools (article 6, § 5). The Supreme Court concluded:

> The respective duties and obligations vested in the legislature and the local school boards by the Kansas Constitution must be read together and harmonized so both entities may carry out their respective obligations. In considering the competing provisions, we do not find that the statute in question is so unreasonable that it unduly interferes with or hamstrings the local school board in performing its constitutional duty to maintain, develop and operate the local public school system.

Id. at 464, 845 P.2d at 685.

The Southwestern Plaintiffs urge the adoption of the same test in this circumstance where the competing powers of section 5 and section 6 are addressed. However, the holding in *McMillen*, which was dealing with sections 1 and 5, is inapplicable because of the different nature of the sections.

In *McMillen*, the Court was concerned with sections 1 and 5 which grant the same powers to two entities, the legislature and the local board. Both have the power to establish and maintain schools. Hence, it logically follows that the powers must be balanced. However, in this case we must harmonize the powers granted in sections 5 and 6. Section 6 is the only provision which mentions finance of education. That power is given to the legislature and only the legislature. There is a balancing imposed by section 6 itself: the legislature must provide "suitable" financing. However, this does not foreclose the legislature

from imposing limitations on spending or upon the taxing authority of a district.

4. Equitable Financing Necessary For Local Control

In fact, limitations may be necessary for local control to be maintained. Considerable testimony was presented in court that many school districts felt there was more local control under the Act than under the prior statutes. This conclusion is consistent with the conclusion of several courts that equitable and suitable funding is necessary for there to be local control.

> Some have argued that reform in school finance will eliminate local control, but this argument has no merit. An efficient system does not preclude the ability of communities to exercise local control over the education of their children. It requires only that the funds available for education be distributed equitably and evenly. An efficient system will actually allow for more local control, not less. It will provide property-poor districts with economic alternatives that are not now available to them. Only if alternatives are indeed available can a community exercise the control of making choices.

Edgewood Independent School District v. Kirby, 777 S.W.2d 391, 398 (Tex. 1989).

The Supreme Court of Tennessee rejected local control arguments as a justification for disparate spending, noting that for low wealth districts, the district "has, in effect, a stone wall beyond which it cannot go in attempting to fund its educational system regardless of its needs.

In those cases, local control is truly a 'cruel illusion' for those officials and citizens who are concerned about the education of the county's school children". *Tennessee Small School Systems v. McWherter*, 851 S.W.2d 139, 155 (Tenn. 1993).

Similarly, the Montana Supreme Court concluded a local board's power of supervision and control of the schools could not be allowed to foster spending disparities. *Helena Elementary School District No. 1 v. State*, 236 Mont. 44, 769 P.2d 684, 690 (1989).

B. Conclusion

Hence, the court concludes that the finance provisions of the Act do not violate article 6, section 5 of the Kansas Constitution. The legislature, in exercising its power to finance public schools, did not unduly impede the power of locally elected boards to establish, operate, and maintain schools.

X. DO THE QUALITY PERFORMANCE PROVISIONS VIOLATE ARTICLE 6, SECTION 5?

Various Plaintiffs also challenge the Quality Performance Accreditation (QPA) provisions of the Act as an unconstitutional restriction upon the authority of the locally elected board to maintain, operate, and develop the district. As more fully discussed above, QPA is structured around four key focus areas: (a) school improvement through effective school principles; (b) a high standard of academic performance through an integrated

curricular approach which is one that unites all curriculum through defined outcomes in order to meet the specific needs of students; (c) human resource development/ staff training and retraining; and (d) community-based programs. The philosophy of QPA is to move away from the historical process of school building accreditation which looked to quantifiable inputs such as the number of books, classroom size, or number of computers. Instead, QPA looks to the performance of students. The result is a focus upon the performance of students and increasing their academic and skill levels.

In evaluating whether the QPA provisions are unconstitutional, two levels of analysis must be applied. First, as to the legislative enactment, the standard enunciated in *McMillen* applies. Thus, the question is whether the provision "unduly interferes with or hamstrings the local school board in performing its constitutional duty to maintain, develop and operate the local public school system".

The focus of the legislation is upon ten statutorily-defined outcomes: (1) teachers establish high expectations for learning and monitoring pupil achievement through multiple assessment techniques; (2) schools have a basic mission which prepares the learners to live, learn, and work in a global society; (3) schools provide planned learning activities within an orderly and safe environment which is conducive to learning; (4) schools provide instructional leadership which results in improved pupil performance in an effective school environment; (5) pupils have the communication skills necessary to live, learn, and work in a global society; (6) pupils think creatively and solve problems in order to live, learn, and

work in a global society; (7) pupils work effectively both independently and in groups in order to live, learn, and work in a global society; (8) pupils have the physical and emotional well being necessary to live, learn, and work in a global society; (9) all staff engage in on-going professional development; and (10) pupils participate in lifelong learning. K.S.A. 72-6439.

These ten points derive from and parallel the national educational goals formulated by fifty governors. The goals were endorsed by the last three presidential candidates and are largely agreed to by the American public. Hence, the outcomes result in an assessment process which is in accord with the widely agreed-upon recognition of the importance of goals and outcome-driven instruction. Through utilization of these widely recognized educational concepts, the Act links school finance and education restructuring. The result is accountability to Kansas taxpayers, parents, students, and the state board of education regarding the expenditure of Kansas tax dollars. This accountability is achieved through statements which are broad enough that the statutory provisions do not hamstring or interfere with the locally elected board. Hence, the statutory provisions are constitutional.

Second, as to the standards imposed by the Kansas State Board of Education, the analysis contained in *State ex rel. Miller v. Board of Education of Unified School District No. 398, Marion County (Peabody), Kansas*, 212 Kan. 482, 511 P.2d 705 (1973), applies. As a part of the QPA program, the state board is required by the Act to develop outcomes, standards, and means of assessment for a minimum of three bench mark levels in grades kindergarten

through 12 in the skills of mathematics, science, communication (reading, writing, speaking, and listening), and social studies. The standards must be established by July 1, 1993 and must be reviewed at least in three year intervals.

Within each of the four focus areas, outcome measures have been designated by the state board. Standards of acceptable levels of excellence and indicators of the standards have been designated for each state outcome. In addition to the state board standards and indicators for each outcome, districts and schools must identify and work toward locally-determined standards and indicators, as needed, to support a comprehensive school program.

The Plaintiffs argue that in measuring an outcome the state board, in effect, predetermines a curriculum and a focus in the education. Students are taught substance and methods to match the test, not the subject and method determined by the locally elected board.

As discussed above, in the *Peabody* decision the Court recognized that the state board could not control the local school but could oversee, direct, inspect the performance of, and superintend. Expanding upon this, the Court approvingly quoted a Florida decision which had utilized the following definition of "supervision" from *Webster's Collegiate Dictionary:* "The direction and critical evaluation of instruction, esp. in public schools". 212 Kan. at 491 (quoting *Continental Casualty Co. v. Borthwick,* 177 So. 2d 687, 689 (Fla. App. 1965)).

The QPA standards allow the state board to undertake this task of "critical evaluation" in accrediting

schools. The fact that the evaluation is based upon outcomes rather than inputs may make the evaluation more "critical" of what is being taught. However, the regulations do not result in the state board controlling the public schools. Local schools maintain significant latitude in planning curriculum and means by which to achieve the specified outcomes. As stated in 1993 House Concurrent Resolution Number 1609, the plan allows "local flexibility in the development of strategies to meet the outcomes. . . . " 1993 Kan. Sess. L. ch. 294, at 1925. Through the resolution, the legislature stressed that student academic performance is to be the emphasis. It is left to the locally elected board to control the district's public schools in such a way that the students can achieve those standards. The state board does not control how that will be achieved. Hence, the state board is operating within its constitutional mandate of "critical evaluation" in the "supervision" of public schools and has not infringed upon the constitutional powers of the locally elected board.

XI. DOES THE REQUIREMENT OF SCHOOL SITE COUNCILS VIOLATE ARTICLE 6 OF THE KANSAS CONSTITUTION?

Within each of the four focus areas, outcome measures have been designated by the state board. Standards of acceptable levels of excellence and indicators of the standards have been designated for each state outcome.The Plaintiffs argue that the legislature has unduly interfered with the locally elected boards by requiring school site councils. K.S.A. 72-6439 mandates a council in all districts with multiple schools and allows districts

with one site to establish a council. During the 1994-95 school year at least one school in each district must participate. In the 1995-96 school year every school must participate. *Id.* at (d).

Fifty (50) districts and 134 attendance centers served as pilots during the 1991-92 school year. At the beginning of the 1992-93 school year, 85 districts and 339 schools voluntarily entered the QPA system. During the 1991-92 school year, six of the seventeen school district Plaintiffs participated in the state board's QPA program. Those districts are: Moscow USD 209, Blue Valley USD 229, Burlington USD 244, Dodge City USD 443, Stanton County USD 452, and Leavenworth USD 453. In the 1992-93 school year, five more Plaintiff school districts joined the QPA program. Those districts are: Hugoton USD 210, Lakin USD 215, Elkhart USD 218, Pittsburg USD 250, and Newton USD 373.

The evidence at trial was that the size, makeup, functioning and roles of the site councils vary from district to district. The statute requires the principal to be on the council. Teachers, other school personnel, parents of students attending the school, the business community, and other community groups must be represented. The method for selecting these individuals, the organizational structure, and the nature of the representation from these groups is left to the district.

The statutorily mandated role of the council is also very vague.

> School site councils shall be responsible for providing *advice and counsel* in evaluating state, school district, and school site performance

> goals and objectives and in determining the methods that should be employed at the school site to meet these goals and objectives.

K.S.A. 72-6439(c)(1) (emphasis added). Hence, the site council plays only an advisory role in (1) evaluating goals and objectives and (2) determining methods to meet those goals and objectives. It has no direct power and can mandate no action by the school or by the locally elected board. The locally elected board maintains full control. *Compare Bushee v. Board of Education of Boone County*, No. 92-CA-002481-MR (Ky. Ct. App., November 19, 1993) (1993 WL 473751).

Given the discretion the locally elected school board has in defining the selection, size, makeup, organization, and role of these councils, the court does not find that "the statute in question is so unreasonable that it unduly interferes with or hamstrings the local school board in performing its constitutional duty to maintain, develop, and operate the local public schools system". *Unified School District No. 380, Marshall County, Kansas v. McMillen*, 252 Kan. at 464.

XII. DO OTHER SCHOOL REFORMS VIOLATE ARTICLE 6 OF THE KANSAS CONSTITUTION?

Some Plaintiffs object to the so-called school reform provisions which generally lengthen the school year and impose requirements for the amount of in-service training of the professional staff.

The Act requires all school districts in Kansas to provide at least two days of in-service education for its district personnel in 1992-93. In the 1993-94 school year,

the Act mandates a minimum of three days of in-service education for district personnel. Prior to adoption of the Act, in-service education was encouraged but not mandated. At the time of the legislature's consideration of the in-service mandate, 260 of the 304 school districts participated in the in-service education program then in existence. The state board estimated, when providing testimony to the legislature, that the number might increase to 280 during the 1992-93 school year if there was no legislative mandate. The state board strongly supported the expansion of in-service training to include all school districts in the state.

The court heard no opposition to the proposition that appropriate in-service programs at the local level benefits the state's education system. The opposition arises from being told the local districts must have the in-service and extend the length of the school year.

The court finds that these provisions fall within the legislature's power to maintain schools. Further, the provisions do not unduly hamstring the locally elected district and are not, therefore, unconstitutional.

XIII. DOES THE ACT VIOLATE SECTION 6, ARTICLE 6 OF THE KANSAS CONSTITUTION BY FAILING TO PROVIDE "SUITABLE" FINANCING?

As previously discussed, the balancing of the legislature's power over school finance is the constitutional requirement that the "legislature shall make suitable provision for finance of the educational interests of the state". Article 6, § 6. Some of the Plaintiffs argue that the

legislature has violated this section by not providing "suitable" financing and that this failure infringes upon local control.

In support of this argument, the Southwestern Plaintiffs cite cuts in programs and expenditures made in some school districts. One example is in Moscow. For the Moscow School District, the expenditures per pupil for school years 1990-1991 through 1992-1993 were as follows:

	1990-1991	1991-1992	1992-1993 w/o LOB	1992-1993 w/LOB
Full Time Enrollment	139.5	160.1	168	168
Per Pupil Expenditure	$9,575	$9,978	$7,489	9,322

Exhibit No. 4008

The Moscow School District's mill rates for school years 1990-1991 through 1992-1993 were as follows:

	1990-1991	1991-1992	1992-1993 w/LOB
Mill Rate (in mills)	14.45	17.77	40

Exhibit No. 4009. In 1992-93, Moscow sent $800,000 in recaptured taxes back to the state. The district utilized the full amount of the local option budget available to it.

Moscow was forced to cut expenditures by $652 per pupil. Despite a five percent (5%) increase in enrollment, the District was still $60,000 short from the previous budget level for the 1991-1992 school year. This meant that the Moscow district had to reduce its teachers' raises from those usually given. Teacher raises in the district were two percent (2%) last year, while the state average for teacher raises was eight percent (8%). In addition to the effect on teacher salaries, the budgetary shortfall caused by the Act forced the Moscow district to leave vacant a principal's position, reduce supplies, reduce in-service training, and cut all assistant coaching positions. Many witnesses testified these cuts will reduce Moscow's ability to attract teachers. Evidence was presented that it is difficult to attract teachers to remote, rural areas. Salary and benefits have been utilized as an inducement.

Moscow offers forty-three (43) classes. This curriculum is supplemented by a two-way tie-in fiber optic program. Tie-in programs in foreign languages were cut in the 1992-93 school year due to a lack of money. For example, courses in Latin, Japanese and Russian, previously offered over the two-way fiber optic system, were cut. In addition, the district cut the psychology and sociology classes during the 1992-93 school year. Students must drive one to two hours to take those classes no longer available at the Moscow School District.

In 1993-1994, the Moscow School Board may be forced to reduce its bus routes from four to three. With only three routes, some students would be on the bus for three (3) hours a day. The Kansas State Board of Education strongly recommends that a child not ride a bus longer than one hour for the entire day.

The Blue Valley Plaintiffs make a similar argument. Blue Valley decreased the budget per pupil in its district from the 1991-92 figure of $4,821 to a 1992-93 budget per pupil of $4,703, a reduction of $118 per pupil. Some of the specific line item cuts included: $60,000 for "Parents as Teachers" salaries; $208,500 for substitute teacher salaries; $15,000 for teacher aid salaries; $240,000 for teacher fringe benefits; $19,000 for research/evaluation; $73,000 for special education teacher salaries; $35,000 for special education secretary salaries; $40,000 for teacher grants; $239,466 for staff development or teacher inservice programs; $46,385 for instructional technology; $75,050 for building and instructional supplies; $78,815 for administrator salaries; $123,000 for administrator fringe benefits; $10,000 for public relations; $35,000 for printing/publishing; $753,352 for utility expenses; $25,000 for fuel expenses; $60,000 for data processing services; $460,085 for extra-duty salaries; $67,000 for educational in-service transportation; and $16,000 for travel outside the school district.

The Blue Valley School District was unable to fill several teaching positions. The pupil-teacher ratio increased from 14.01 in 1991-92 to 14.28 in 1992-93. The Blue Valley school district anticipates a further increase in the ratio in 1993-94 unless additional funds are made available. The Blue Valley school district's instructional budget was decreased when calculated on a per-pupil basis. In 1991-92, the instructional budget per pupil was $133.57. In 1992-93, the instructional budget per pupil was $128.61, a reduction of $4.96 per pupil, or a total of $52,498.62. The cost of instructional supplies increased during that school year.

Some of the other Plaintiffs also had to make cuts; others had increased funds. Those with decreased funds argued that the legislation cut off the mountaintops in Kansas education to fill in the valleys. Some of the Plaintiffs argued that the Act should have raised all districts to the level of the mountaintops. As laudable as this may be, such a decision is a policy decision to be made by the legislature, not the court. The judicial consideration is governed by section 1 and section 6 of article 6. Section 1 requires the legislature to "provide for intellectual, educational, vocational and scientific improvement. . . . " No standard of equality or quality is expressed or implied in the statement. Section 6 states the "legislature shall make suitable provision for finance of the educational interests of the state". Article 6, § 6. The issue for judicial determination is whether the Act satisfies this provision, not whether the level of finance is optimal or the best policy.

A. Decisions From Other States

This distinction is important because it distinguishes many of the cases cited by Plaintiffs. In other jurisdictions much of the recent litigation has focused upon the education clauses of the various state constitutions and charters. However, analysis of these decisions reveals that each of these decisions are necessarily controlled by the particular wording of the state's education clause and, to a lesser extent, organization and funding. Some state constitutions specifically mandate "equality". Others mandate "uniformity". Many require "efficiency". Some constitutions specify an explicit and significant standard such as "high quality" or "quality" public education. In

Louisiana the standard is to provide "excellence". Many other states imply a lower standard such as "thorough", "efficient", or "adequate". *See* McUsic, "The Use of Education Clauses in School Finance Reform Litigation," 28 Harv. J. Leg. 308 (1991).

Based upon the language of their respective state constitutions, some courts have rejected education clause challenges to public school funding legislation when the challenge is based upon the adequacy of funding or upon uniformity of funding. *See, e.g., Lujan v. Colorado State Board of Education*, 649 P.2d 1005, 1025 (Colo. 1982) (Colorado's constitution requirement of a "thorough and uniform system of free public schools," while mandating equal educational opportunities, does not necessitate equal expenditures per pupil); *McDaniel v. Thomas*, 248 Ga. 632, 285 S.E.2d 156, 164 (1981) (constitution requires only an "adequate education," not equal educational opportunities); *Thompson v. Engelking*, 96 Idaho 793, 537 P.2d 635, 647 (1975) (equal educational opportunities not required by constitutional requirement of "general, uniform and thorough system" of public schools); *Hornbeck v. Somerset County Board of Education*, 295 Md. 597, 458 A.2d 758, 776 (1983) ("thorough and efficient" clause commands only that legislature provide the students of the state "with a basic public school education"); *East Jackson Public Schools v. State*, 133 Mich. App. 132, 348 N.W.2d 303, 305 (1984) (provision mandating legislature to "maintain and support a system of free public elementary and secondary schools" grants only a right to an adequate education); *Board of Education, Levittown Union Free School District v. Nyquist*, 57 N.Y.2d 27, 47-48, 453

N.Y.S.2d 643, 653, 439 N.E.2d 359, 368-69 (1982) (constitutional provision for "the maintenance and support of a system of free schools" contemplates only "minimal acceptable facilities and services"), *appeal dismissed*, 459 U.S. 1138 (1983); *Britt v. North Carolina State Board of Education*, 86 N.C. App. 282, 357 S.E.2d 432, 436 (1987) (state constitutional provision requiring "general and uniform system of free public schools . . . wherein equal opportunities shall be provided for all students" mandates only equal access to schools, not a right to identical opportunities); *Board of Education of the City School District of Cincinnati v. Walter*, 58 Ohio St. 2d 368, 390 N.E.2d 813, 825, 12 Ohio Op. 3d 327 (1979), *cert. denied*, 444 U.S. 1015 (1980) (constitutional requirement that a "thorough and efficient" education be provided mandates only that students not be deprived of "educational opportunity"); *Fair School Finance Council of Oklahoma, Inc. v. State*, 746 P.2d 1135, 1149 (Okla. 1987) (mandate to "establish and maintain" a public school system guarantees only a "basic, adequate education according to standards . . . "); *Olsen v. State ex rel. Johnson*, 276 Or. 9, 554 P.2d 139, 148 (1976) (constitution prescribing a "uniform and general system" of schools guarantees only a minimum of educational opportunity); *Danson v. Casey*, 484 Pa. 415, 399 A.2d 360, 365 (1979) (a "thorough and efficient" education is equated with an "adequate," "minimum," or "basic" education); *Richland County v. Campbell*, 294 S.C. 346, 364 S.E.2d 470, 472 (1988) (constitutional requirement that legislature maintain and support public schools guarantees equal standards and equal opportunity under the method of funding chosen by the legislature).

Even in states which the courts have upheld constitutional challenges based upon their respective education clauses, often only "adequacy" has been required. *See, e.g., Alabama Coalition for Equity, Inc. v. Hunt,* No. CV-90-883-R (Ala. Cir. 1993) (1993 Westlaw 204083) (constitution's education guarantee accords right to "quality education that is generous in its provision and that meet minimum standards of adequacy"); *Rose v. Council for Better Education,* 790 S.W.2d 186, 211 (Ky. 1989) (the constitutionally required "efficient" system of public schools" must be substantially uniform throughout the state," providing every child in the state "with an equal opportunity to have an adequate education"); *Helena Elementary School District No. 1 v. State,* 236 Mont. 44, 769 P.2d 684, 690 (1989) (constitution expressly provides for "equality of educational opportunity"), *modified in* 236 Mont. 44, 784 P.2d 412 (1990) (delaying effective date of decision); *Abbott v. Burke,* 119 N.J. 287, 575 A.2d 359, 368-69 (1990) ("thorough and efficient" system will provide an "equal educational opportunity for children" enabling each student to become "a citizen and . . . a competitor in the labor market"); *Edgewood Independent School District v. Kirby,* 777 S.W.2d 391, 397 (Tex. 1989) ("efficient" system guarantees "substantially equal access to similar revenues per pupil at similar levels of tax effort" so that students are "afforded a substantially equal opportunity to have access to educational funds"); *Seattle School District No. 1 of King County v. State,* 90 Wash. 2d 476, 585 P.2d 71, 97 (1978) (constitutional language calling for "ample provision" for a "general and uniform" system of schools imposes a duty to "make ample provision for the 'basic education' of our resident

children through a general and uniform system supported by dependable and regular tax sources"); *Pauley v. Kelly*, 162 W. Va. 672, 255 S.E.2d 859, 877 (1979) ("thorough and efficient" education is one which "develops, as best the state of education expertise allows, the minds, bodies and social morality of its charges to prepare them for useful and happy occupations, recreation and citizenship, and does so economically").

B. The Standard in Kansas

What may be concluded from these decisions is that the analysis necessarily differs state to state. While many courts state laudatory goals for educational systems, such statements reach beyond the requirement of the Kansas constitution.

The standard most comparable to the Kansas constitutional requirement of "suitable" funding is a requirement of adequacy found in several state constitutions. In common terms, "suitable" means fitting, proper, appropriate, or satisfactory. *Webster's New Collegiate Dictionary* (1977). Suitability does not mandate excellence or high quality. In fact, suitability does not imply any objective, quantifiable education standard against which schools can be measured by a court. Rather, value judgments must be made regardless of whether the constitutional mandate requires that education be suitable, sufficient, appropriate, or adequate. Because these concepts are amorphous, courts have molded tests by which to assess the level of funding.

One of the most frequently cited definitions of an adequate education was one proffered by the Kentucky

Supreme Court when it iterated six goals of education: (1) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization; (2) sufficient knowledge of economic, social, and political systems to enable the student to understand the issues that affect the community, state, and nation; (3) sufficient self-knowledge and knowledge of his or her mental and physical wellness; (4) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage; (5) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and (6) sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states whether competing in academics or the job market. *Rose v. Council for Better Education*, 790 S.W.2d at 212.

Another court indicated that a sufficient education was one which "will equip all the students of this state to perform their roles as citizens and competitors in the same society". *Abbott v. Burke*, 575 A.2d 359, 410 (N.J. 1990).

Most recently, these definitions were embraced by the Alabama Circuit Court, in *Alabama Coalition for Equity, Inc. v. Hunt*, No. CV-90-883-R (Ala. Cir. 1993) (1993 Westlaw 204083), after the court found that the state's constitution's education "guarantee is one that accords school children of the state the right to a quality education that is generous in its provision and meets minimum standards of adequacy". *Id.* at 1993 WL *52.

The definitions in *Hunt*, *Rose* and *Abbott* bear striking resemblance to the ten statements or goals enunciated by the Kansas legislature in defining the outcomes for Kansas schools, which includes the goal of preparing the learners to live, learn, and work in a global society. K.S.A. 72-6439. Through the quality performance accreditation standards, the Act provides a legislative and regulatory mechanism for judging whether the education is "suitable". These standards were developed after considerable study by educators from this state and others. It is well settled that courts should not substitute judicial judgment for educational decisions and standards. *Finstad v. Washburn University of Topeka*, 252 Kan. 465, 475, 845 P.2d 685 (1992). Hence, the court will not substitute its judgment of what is "suitable", but will utilize as a base the standards enunciated by the legislature and the state department of education.

The evidence presented is that all schools in Kansas are able to meet such a standard. Some Plaintiffs, particularly Moscow, argue that eventually the Act will result in closure of schools and even the district and, therefore, the financing will not be suitable. However, the court cannot base its judgment upon the speculation of what may happen in the future. At this time, the standards are being met. Nor is the judgment of the court controlled by the many policy concerns raised by Plaintiffs who indicted the Act for failing to ensure that per pupil spending would continue to increase in proportion with increasing needs, for not allowing local boards to make long range plans, for not providing an inflationary factor, and for fostering a spend-or-lose philosophy.

However, the issue of suitability is not stagnant; past history teaches that this issue must be closely monitored. Previous school finance legislation, when initially attacked upon enactment or modification, was determined constitutional. Then, underfunding and inequitable distribution of finances lead to judicial determination that the legislation no longer complied with constitutional provisions. *Compare Knowles v. Board of Education*, Case No. 77 CV 251 (Shawnee County District Court, January 26, 1981) (upon remand from the Supreme Court [219 Kan. 271, 547 P.2d 699 (1976)] for evaluation of legislative modifications, finding the School District Equalization Act [SDEA] constitutional) with *Mock v. State of Kansas*, Consolidated Case No. 91-CV-1009 (Shawnee County District Court, October 14, 1991) (impliedly holding SDEA was unconstitutional). However, while the issues raised by plaintiffs raise serious policy questions, the arguments do not compel a determination that the financing is not "suitable" at the present time. The Act does not violate section 6 of article 6.

XIV. DOES THE ACT VIOLATE THE ONE-PERSON-ONE-VOTE RULE?

The Burlington Plaintiffs argue the Act violates the one-person-one-vote principle since the legislature is determining general tax budgets and accreditation issues for the Burlington district. The argument is that Burlington only elects two members to the house of representatives and one state senator, but the entire legislature mandates the tax, budget, and accreditation criteria for the Burlington schools. Primarily, Burlington relies upon

Reynolds v. Sims, 377 U.S. 533, 84 S. Ct. 1362 12 L. Ed 2d 506 (1964); *Lucas v. Forty-Fourth General Assembly of State of Colorado*, 377 U.S. 713, 84 S. Ct. 1459, 12 L. Ed. 2d 632 (1964); and *Davis v. Mann*, 377 U.S. 678, 84 S. Ct. 1441, 12 L. Ed. 2d 609 (1964), as those cases have been applied to local units of government in *Avery v. Midland County, Texas*, 390 U.S. 474, 88 S. Ct. 1114, 20 L. Ed. 2d 45 (1968) and *Board of Estimates of City of New York v. Morris*, 489 U.S. 688, 109 S. Ct. 1433, 103 L. Ed. 2d 717 (1989).

Burlington has not established any disparities in legislative district representation. Nor has Burlington established that any school district within the state, and more particularly the Burlington District, is not in compliance with the one-person-one-vote rule.

Rather, Burlington's argument is closely tied to, if not dependent upon, the principles of article 6, section 5. More precisely the argument depends upon an interpretation that section 5 places the tax, funding, and budget issues in the control of the locally elected board. It has already been determined that the constitution does not give locally elected boards control of these issues. Rather, that control is given the legislature. Hence, the actions of the legislature are within that body's constitutional powers. Therefore, Burlington has the representation on all issues to the extent guaranteed under the Kansas constitution. The Act does not, therefore, violate the one-person-one-vote principle.

XV. DOES THE ACT VIOLATE THE EQUAL PROTECTION PROVISIONS OF THE KANSAS AND UNITED STATES CONSTITUTION?

The Newton, Blue Valley, and Burlington Plaintiffs allege that various provisions of the Act violate the equal protection provisions of the United States and Kansas Constitutions. The Fourteenth Amendment to the United States Constitution provides that no state shall "deny any person within its jurisdiction the equal protection of the laws". The Kansas counterpart to the Fourteenth Amendment equal protection clause is found in section 1 of the Bill of Rights of the Kansas Constitution, which provides: "All men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness."

A. Standards of Scrutiny

In applying these provisions the courts have recognized that there must necessarily be classifications created in the operation of government. These various classes are as diverse and pluralistic as is our society. Usually any given act of the legislature results in classifications of individuals who are benefitted by the legislation and other classifications of individuals who are burdened. This result does not automatically render legislation unconstitutional. The courts must, therefore, scrutinize the classifications to determine whether a classification is constitutional.

To do so, the court must first determine whether the right or interest involved is one which is fundamental. If so, the court must apply a critical and active level of

analysis referred to as "strict scrutiny". Under the analysis it must be determined that the classification is necessary to serve a compelling state interest. If the interest or right is not fundamental, traditionally the analysis applied is the "rational" or "reasonable" basis test. Under this test, the constitutional standard is offended only if the legislation is irrelevant to the goal of the legislation. In other words, the classification must be rationally related to a legitimate objective. If any state of facts reasonably may be conceived to justify the relationship, the discriminatory classifications are not unconstitutional. More recently a third level of analysis has evolved. This level is an intermediate level of heightened scrutiny and is applicable to "quasi-suspect" classifications. This standard requires a stronger justification for the legislation than is demanded by the rational basis standard. A substantial, direct relationship between the classification and an important governmental objective must be established. *Thompson v. KFB Insurance Co.*, 252 Kan. 1010, 1016-17, 850 P.2d 773 (1993).

Except in cases involving "suspect classifications" or "fundamental interests", the burden is upon the party attacking the statute to prove the statute is unconstitutional. If the case involves a suspect classification or fundamental interest, this burden shifts to the party asserting constitutionality to demonstrate a compelling state interest which justifies the classification. *Farley v. Engelken*, 241 Kan. 663, 667, 740 P.2d 1058 (1987).

B. Analysis Under the United States Constitution

Plaintiffs and courts in some jurisdictions cite *Brown v. Board of Education*, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954), for the proposition that a strict scrutiny analysis should be applied and education should be determined a fundamental right. However, while *Brown* clearly held that strict scrutiny should be applied to educational classifications based upon race, that conclusion was reached because race is a suspect class. The Supreme Court did not conclude that education is a fundamental right. *See Parker v. Mandel*, 344 F. Supp. 1068, 1077 (D. Md. 1972); *Hornbeck v. Somerset County Board of Education*, 295 Md. 597, 458 A.2d 758, 786 (1983); *Robinson v. Cahill*, 62 N.J. 473, 303 A.2d 273, 284 (1973).

In fact, in a case more clearly on point, *San Antonio Independent School District v. Rodriquez*, 411 U.S. 1, 36 L. Ed. 2d 16, 93 S. Ct. 1278, *rehearing denied*, 411 U.S. 959, 36 L. Ed. 2d 418, 93 S. Ct. 1919 (1973), five members of the United States Supreme Court concluded that an equal protection challenge to the Texas system of financing public schools could not be sustained, both because poor children were not a "suspect class" and because education was not a "fundamental right". In reaching the conclusion that the education was not a fundamental right under the United States Constitution, the Court articulated a test that rights are fundamental for equal protection purposes only if guaranteed "explicitly or implicitly" by the Constitution. 411 U.S. at 33-34. In addition, the Court noted:

> "The broad discretion as to classification possessed by a legislature in the field of taxation

> has long been recognized. . . . [T]he passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a legislature in formulating sound tax policies. . . . It has . . . been pointed out that in taxation, even more than in other fields, legislatures possess the greatest freedom in classification. Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only be [sic] the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. . . . "

Id. at 40-41 (quoting *Madden v. Kentucky*, 309 U.S. 83, 87-88, 84 L. Ed. 590, 60 S. Ct. 406 (1940)). Hence, Plaintiffs have a significant burden under the United States Constitution.

C. Kansas Supreme Court's Adoption of Rodriquez

Shortly after the *Rodriquez* decision, the Kansas Supreme Court considered an equal protection challenge to the 1973 School District Equalization Act. After citing to *Rodriquez*, the Kansas Supreme Court stated:

> The present case is one where the presumption of constitutionality which attends every legislative act can be overcome only by the most explicit demonstration that the method of classification and the payments made results in a hostile and oppressive discrimination against particular persons and classes.

Knowles v. State Board of Education, 219 Kan. 271, 278, 547 P.2d 699 (1976).

Noting that the facts and figures necessary for such a challenge were not available in the record, the Supreme Court declined to examine the constitutional questions raised by the plaintiffs. The Court's adoption of the *Rodriquez* test indicates that a rational basis analysis would be applied. However, the Plaintiffs argue the Kansas Supreme Court did not clearly adopt the rational basis test. While the decision in *Knowles* clearly holds a suspect classification is not involved, the holding does not specifically address the question of whether there is a fundamental interest at issue.

D. Other Kansas Decisions

With regard to that question, the Plaintiffs rely upon a variety of other Kansas cases to support the conclusion that strict scrutiny should be applied in reviewing the Act. These cases, while emphasizing the importance of education, do not support a finding that public education is a fundamental interest as that term is applied in constitutional law.

Several of the cases, in a manner similar to *Brown v. Topeka Board of Education*, are based upon suspect classifications. In *Board of Education of City of Ottawa v. Tinnon*, 26 Kan. 1 (1881), the Kansas Supreme Court struck a classification based upon race. In *State v. Smith*, 155 Kan. 588, 127 P.2d 518 (1942), and *State v. Garber*, 197 Kan. 567, 419 P.2d 896 (1966), *cert. denied*, 389 U.S. 51 (1967), the

Court struck statutes which created religious classifications.

Further, the Court has held that students have a constitutional right to attend public schools. However, in *Blaine v. Board of Education, Haysville Unified School District No. 261*, 210 Kan. 560, 502 P.2d 693 (1972), the Court applied a test of whether a disciplinary standard had a "rational purpose with substantial support in the evidence". *Id.* at 571. *See also Nutt v. Board of Education of City of Goodland, Sherman County, Kansas*, 128 Kan. 507, 509, 278 P. 1065 (1929) (recognizing privilege of attending school unless "it is clear that the public interest demands the expulsion of such a student or a denial of his right to attend".)

The other cases cited by Plaintiffs reveal that the Court has, on several occasions, found a need to cite the importance of education. However, none of the cases cited have held that education is a fundamental right. *See Provance v. Shawnee Mission Unified School District No. 512*, 231 Kan. 636, 643, 648 P.2d 710 (1982) (rational basis applied to question of voting restriction which affected school closing), *appeal after remand*, 235 Kan. 927, 683 P.2d 902 (1984); *State ex rel. Smith v. Kemp*, 124 Kan. 716, 720-21, 261 P. 556 (1927) (declaring the importance of education and of history to education which justifies declaring the Shawnee Missions as lands and buildings of unusual historic interest), *appeal dismissed*, 278 U.S. 191 (1929); *State ex rel. Fatzer v. Board of Regents*, 167 Kan. 587, 595, 207 P.2d 373 (1949) (state duty bound by organic law to promote education).

While the decision in *Blaine v. Board of Education Haysville Unified School District No. 261*, 210 Kan. 560, 502 P.2d 693 (1972), indicates a rational basis should be applied under the facts there presented, the decisions do not settle the issue of whether strict scrutiny or rational basis analysis should be applied in this case. The analysis of other courts in other states is helpful in this consideration.

E. Cases From Other Jurisdictions

1. Suspect Class Analysis

The courts of other jurisdictions have uniformly rejected claims that school finance legislation creates "suspect" classes. Most often the analysis in these cases follows the analysis of *Rodriquez* that legislatures have broad discretion in taxation classifications. Additionally, the courts have determined that groups of children from wealthy school districts or poor school districts lack the characteristics traditionally necessary for "suspectness". As a group, poor or rich students have no readily identifiable racial or lineal traits; they are instead an amorphous group which varies by time and place. Further, such groups have not been historically subject to purposeful unequal treatment and have not been reduced to complete powerlessness. *See, e.g., Lujan v. Colorado State Board of Education*, 649 P.2d 1005, 1020-22 (Colo. 1982); *Robinson v. Cahill*, 62 N.J. 473, 303 A.2d 273, 379 N.J. *cert. denied sub nom. Dickey v. Robinson*, 414 U.S. 976 (1975); *Milliken v. Green*, 212 N.W.2d at 714; *Skeen v. State of Minnesota*, 505 N.W.2d 299 (Minn. 1993). *But see Washakie County School District No. One v. Herschler*, 606 P.2d 310,

319, *cert. denied sub nom. Hot Springs County School District No. 1 v. Herschler*, 449 U.S. 824 (1980); *Serrano v. Priest (Serrano II)*, 18 Cal. 3d 728, 557 P.2d 929, 950-51, 136 Cal. Rptr. 345 (1976), *cert. denied sub nom. Clowes v. Serrano*, 432 U.S. 907 (1977), *supplemented by*, 20 Cal. 3d 25, 569 P.2d 1303, 141 Cal. Rptr. 315.

Additionally, school districts can not be recognized as a suspect class because the constitutions protect individual rights, not those of local units of government. *Lujan v. Colorado State Board of Education*, 649 P.2d at 1020; *Board of Education Levittown Union Free School District v. Nyquist*, 57 N.Y.2d 27, 439 N.E.2d 359, 366 (N.Y. 1982), *appeal dismissed*, 459 U.S. 1138, 74 L. Ed. 2d 986, 103 S. Ct. 775 (1983).

2. Fundamental Interest Analysis

The courts have not been as consistent in analyzing the issue of whether education is a fundamental interest, the issue not directly addressed by the Kansas Supreme Court in *Knowles*.

At least two courts have implicitly adopted the *Rodriquez* analysis and found that because education was expressly mentioned in the state's constitution, education was a fundamental interest. *Pauley v. Kelly*, 162 W. Va. 672, 255 S.E.2d 859 (1979); *Washakie County School District No. One v. Herschler*, 606 P.2d 310 (Wyo.), *cert. denied sub nom. Hot Springs County School District No. 1 v. Herschler*, 449 U.S. 824 (1980). In a third case to adopt the *Rodriquez* analysis, *Skeen v. State of Minnesota*, 505 N.W.2d 299 (Minn. 1993), the court countered the arguments often

made against the *Rodriquez* test by noting that the Minnesota constitution stated "[t]he stability of a republican form of government depending mainly upon the intelligence of the people, it is the duty of the legislature to establish a general and uniform system of public schools. . . . " The court noted that the concurrence of the phrase expressing the importance and the use of the word "duty" caused education to be a fundamental right. *See also Seattle School District No. 1 of King County v. State*, 90 Wash. 2d 476, 585 P.2d 71, 91 (1978).

In some of the states where it has been determined that education is a fundamental right, the determination has been based upon the state constitution's education clause, that clause's relationship to the constitution as a whole, the state's constitutional history, and the perception that the framers intended education as a fundamental right. *See, e.g., Alabama Coalition for Equity v. Hunt*, No. CV-90-883-R (Ala. Cir. 1993) (1993 Westlaw 204083); *Horton v. Meskill*, 172 Conn. 615, 653-55, 376 A.2d 359, 376-77 (1977) (Bogdanski, J., concurring); *Washakie County School District No. One v. Herschler*, 606 P.2d 310, *cert. denied sub nom. Hot Springs County School District No. 1 v. Herschler*, 449 U.S. 824 (1980). Another criterion state courts have applied for assessing fundamentality is how close a nexus the right has with other constitutionally protected rights. *See, e.g., Serrano v. Priest*, 5 Cal. 3d 584, 607-08, 487 P.2d 1241, 1258, 96 Cal. Rptr. 601, 618 (Cal. 1971) (*Serrano I*). For example, some state constitutions express the importance of education in preserving democracy and the rights and liberties of the people. *See* Mo. Const. art. IX, § 1(a).

In many of the decisions where a court has recognized education as a fundamental right, several courts have applied this only to the provision of a basic education and have not extended the analysis to per pupil funding. For example, in the most recent case, *Skeen v. State of Minnesota*, the Minnesota Supreme Court noted:

> Thus, the evidence indicates that while strict scrutiny analysis should be applied in determining whether the legislature has met a student's fundamental right to a general and uniform *system* of public schools, a lesser standard, such as a rational basis test, should apply to the determination of whether the *financing* of such a system is "thorough and efficient".

505 N.W.2d 299, 315 (Minn. 1993) (emphasis in original). The distinction derived from the fact that one article of the Minnesota constitution imposed a duty to provide schools and, in fact utilized the word "duty", while the drafters of the constitution included another section for financing and omitted the word "duty".

Similarly, the Wisconsin Supreme Court in *Kukor v. Grover*, 148 Wis. 2d 469, 436 N.W.2d 568 (1989), and the Arizona Supreme Court in *Shofstall v. Hollins*, 110 Ariz. 88, 515 P.2d 590 (1973), both held that although education was a fundamental right, the application of that right was limited to the scope of their respective state constitution's education provision. *Kukor*, 436 N.W.2d at 579-80; *Shofstall*, 515 P.2d at 592. When the courts determined that the state was fulfilling the constitutional mandate of the education provision, the courts found that an equal protection claim was entitled only to a rational basis standard. *Kukor*, 426 N.W.2d at 580; *Shofstall*, 515 P.2d at 592-93.

Many other courts have totally refused to define education as a fundamental interest. In reaching this conclusion, most state courts have refused to apply the *Rodriquez* test of whether the right is explicitly recognized by the relevant Constitution. In doing so the courts note that the federal government's powers are limited to those specified and delegated because, under the tenth amendment to the United States Constitution, any power not explicitly delegated belongs to the states and the people. However, most of the state courts considering this issue have noted that states are not constrained by the explicit or implicit contents of the state constitution or charter. Therefore, inclusion of a subject in the constitution does not, of itself, reflect any fundamental importance. The Maryland Court of Appeals noted that such analysis would result in almost all state-provided governmental services being deemed "fundamental". *Hornbeck v. Somerset County Board of Education*, 295 Md. 597, 458 A.2d 758 (1983). *See also Serrano v. Priest*, 18 Cal. 3d 728, 557 P.2d 929, 952, 135 Cal. Rptr. 345 (1976) (noting the ease and number of times the California constitution had been amended), *cert. denied sub nom. Clowes v. Serrano*, 432 U.S. 907 (1977); *Serrano v. Priest*, 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601, 487 P.2d 1241 (1971) (same); *Robinson v. Cahill*, 62 N.J. 473, 303 A.2d 273, 282, 69 N.J. 133, 351 A.2d 713, *on rehearing*, 69 N.J. 133, 351 A.2d 713, *cert. denied sub nom. Klein v. Robinson*, 423 U.S. 913 (1975) (noting "the right to acquire and hold property is guaranteed in the federal and state constitution, and surely that right is not a likely subject for [strict scrutiny]"); *Board of Education of City School District of City of Cincinnati v. Walter*, 58 Ohio St. 2d 368, 390 N.E.2d 813, 12 Ohio Op. 3d 327 (1979)

(quoting *Robinson* with approval), *cert. denied*, 444 U.S. 1015 (1980).

Even courts which have refused to adopt the fundamental right analysis have willingly and without hesitation noted the importance of education to both the student and to society. Courts have noted the link between education and a person's social, economic, political, and community life and role. *Lujan v. Colorado State Board of Education*, 649 P.2d 1005, 1017 (Colo. 1982); *Hornbeck v. Somerset County Board of Education*, 295 Md. 597, 458 A.2d 758, 786 (1983); *Board of Education Levittown Union Free School District v. Nyquist*, 57 N.Y.2d 27, 439 N.E.2d 359, 366, 453 N.Y.S.2d 643 (1982), *appeal dismissed*, 459 U.S. 1139 (1983); *Tennessee Small School Systems v. McWherter*, 851 S.W.2d 139 (Tenn. 1993). However, in most cases, the declaration that education is a fundamental right has not followed the finding of its great importance. In fact, the United States Supreme Court effectively rejected the argument in *Rodriquez*. The reasoning of most courts in this regard has been similar to that of the Georgia Supreme Court when noting that, although education was important, no need is more basic than food and shelter. Yet, being on welfare or receiving food stamps is not a fundamental right. *McDaniel v. Thomas*, 248 Ga. 632, 285 S.E.2d 156, 167 (1981).

In addition to rejecting the *Rodriquez* test and the notion that the importance of education is a sufficient ground for applying strict scrutiny, many state courts have enumerated several factors which have compelled them to find that strict scrutiny is not the appropriate level of review. First, courts have noted that there is no authoritative consensus on how to provide the greatest

educational opportunity for all students. As the Colorado Supreme Court noted:

> [T]hese are considerations and goals which properly lie within the legislative domain. Judicial intrusion to weigh such considerations and achieve such goals must be avoided. This is especially so in this case where the controversy, as we perceive it, is essentially directed toward what is the best public policy which can be adopted to attain quality schooling and equal educational opportunity of all children who attend our public schools. *See* M. Cox, *State Judicial Power: A Separation of Powers Perspective*, 34 Okla. L. Rev. 207, 227 (1981).

Lujan v. Colorado State Board of Education, 649 P.2d 1005, 1018 (Colo. 1982).

The other frequently cited reason is that courts should avoid excessive involvement in questions of taxation. *See McDaniel v. Thomas*, 248 Ga. 632, 647, 285 S.E.2d 156, 167 (1981); *Lujan v. Colorado State Board of Education*, 649 P.2d 1005, 1017 (Colo. 1982); *Hornbeck v. Somerset County Board of Education*, 295 Md. 597, 458 A.2d 759, 786 (1983); *Board of Education of City School District of City of Cincinnati v. Walter*, 58 Ohio St. 2d 368, 390 N.E.2d 813, 12 Ohio Op. 3d 327 (1979), *cert. denied*, 444 U.S. 1015 (1980). This reasoning follows from *Rodriquez* as approvingly quoted by the Kansas Supreme Court in *Knowles*. The United States Supreme Court noted that education presents a myriad of intractable economic and social problems. 411 U.S. at 42, 93 S. Ct. at 1031. The Court, at 41-42, 93 S. Ct. at 1301, acknowledged its lack of expertise and familiarity with the problems implicated in the raising

and disposing of public revenues associated with public education.

Closely related to this reasoning is another reason often articulated by courts in rejecting strict scrutiny. The Maryland Court of Appeals noted:

> In this regard, it must be noted that many, if not all, of these rights could, within the *Rodriquez* formulation of fundamental rights, be deemed implicitly guaranteed in most state constitutions, thereby requiring application of the strict scrutiny test – a result which the defendant [sic] say is certain to wreak havoc with the ability of state legislatures to deal effectively with such critical governmental services. To conclude that education is a right so fundamental as to require strict scrutiny analysis would, the defendants say, likely render unconstitutional a substantial portion of the statutes, bylaws and practices that regulate education in Maryland. The defendants advance the further suggestion that if there must be, as the trial judge held, a compelling State interest that would justify deviation from mathematically exact dollar per pupil equality among all of the school districts, intradistrict disparities between areas, schools and even classes within schools in the same county could not be sustained. Similarly, if the right to education is fundamental, it is suggested that the State would be required to show a compelling interest for maintaining any differences among the State's school districts, even if the differences were not financial.

Hornbeck v. Somerset County Board of Education, 295 Md. 597, 458 A.2d 758, 785-86 (1983). Later in the decision, the Court recognized that these arguments by the defendants

were valid, noting that the strict scrutiny test "foreordains the invalidation of nearly every classification involving such analysis". *Id.* at 786.

Finally, many decisions recognize the impossibility of measuring equal protection analysis. While it may be recognized that money does make a difference in education, it is equally recognized that there are many other variables. Hence, educators, social scientists, and courts have been unable to agree on the correlation between educational expenditures and the quality of education. *See* Murnane, "Interpreting the Evidence on 'Does Money Matter,' " 28 Harv. J. on Leg. 457 (1991); Ferguson, "Paying for Public Education: New Evidence on How and Why Money Matter", 28 Harv. J. on Leg. 465 (1991). As a result it is difficult, if not impossible, to develop an ascertainable standard by which to measure equality. Few commentators or courts recommend dollar for dollar equalization. Certainly, the testimony before this court was that dollar for dollar spending does not result in equal educational opportunities. Some state courts have been aided in the development of a standard by the state constitution's statement of a benchmark or standard to measure equality. *See* McUsic, "The Use of Education Clauses in School Finance Reform Litigation," 28 Harv. J. on Leg. 307, 319-25 (1992). However, the Kansas education clause does not contain this requirement or a standard. Kan. Const. art. 6, § 1. *See* McUsic, 28 Harv. J. on Leg. at 325.

Hence, a variety of persuasive reasons exist for applying a rational basis analysis to the equal protection arguments raised by the Plaintiffs. The analysis of these

decisions is persuasive and leads to the determination that the rational basis test should be applied.

3. Analysis Under Horton III

It is interesting to note the evolution of the issue in Connecticut, the state with the longest history of challenges based upon equal protection grounds.[2] When examining the statutory scheme designed to respond to the determination that the state's original scheme was unconstitutional in *Horton v. Meskill*, 172 Conn. 615, 376 A.2d 359 (1977) (*Horton I*), the Connecticut Supreme Court found the traditional strict scrutiny test, which it had applied in *Horton I*, inappropriate at the stage of litigation where the court was reviewing the remedial legislation. Instead, the court adopted the analytical

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[2] New Jersey's litigation has lasted more than seventeen years and has reached the state's supreme court six times. It is anticipated that it is not over. However, the focus there has been on the New Jersey constitution's requirement of a "thorough and efficient system of free public schools". *See Robinson v. Cahill*, 62 N.J. 473, 303 A.2d 273 (1973) through *Abbott v. Burke* (*Abbott II*), 575 A.2d 359 (N.J. 1990). In August, the intermediate appellate court issued an opinion in what will probably be the seventh trip to the supreme court. *Abbott v. Burke*, No. 91-C-00150 (N.J. Super. Ct., August 31, 1993) (1993 WL 379818). In addition, the Texas litigation which has a history of being transferred back and forth between the state supreme court and lower courts, does not focus on the equal protection analysis but upon an attempt to fashion an appropriate remedy. *See Edgewood Independent School District v. Kirby*, No. D-0378 (*Edgewood III*), slip op. February 17, 1991. *Edgewood Independent School District v. Kirby*, 804 S.W.2d 491 (Tex. 1991) (*Edgewood II*); *Edgewood Independent School District v. Kirby*, 777 S.W.2d 391 (Tex. 1989) (*Edgewood I*), *rev'd*, 761 S.W.2d 859 (1988).

framework developed by federal courts to determine the constitutionality of apportionment plans. *Horton v. Meskill*, 195 Conn. 24, 486 A.2d 1099, 1105-06 (1985) (*Horton III*).

The analysis consists of three steps. First, the plaintiff must prove a prima facie case of discrimination by showing that any inequalities are more than minor deviations. The burden then shifts to the state to justify the inequalities by advancing a rational state policy which is reasonably furthered by the statutory scheme. Finally, it must be determined whether the disparities are so great as to defeat the underlying state goal. *Id.* at 1106. In *Horton III*, the court concluded that while the plaintiff had met the first prong and established that disparities existed, those disparities did not undermine the achievements in equalizing state support. *Id.* at 1108.

In Kansas, even though the first phase of the current school finance litigation did not reach the Supreme Court, the litigation is in a phase similar to that in *Horton III*. Hence, the analysis could also be applied here with inquiry being made as to whether the legislature made a good faith effort to gain equality. If so, anything beyond "minor deviations from mathematical equality" (*Brown v. Thomson*, 462 U.S. 835, 103 S. Ct. 2690, 2696, 77 L. Ed. 2d 214 (1983)) require a rational basis free from any taint of arbitrariness or discrimination and which does not emasculate the goal of substantial equality.

This analysis may be appropriate because the statewide standard of $3,600 base state aid per pupil exists in very few districts. The actual budget per pupil for

1992-93 ranged from $3,061.71 to $10,157.14. This disparity is only slightly narrower than under the SDEA. In 1991-92 the general fund budget per pupil ranged from $2,720.28 to $10,483.50. The gap will narrow in the 1993-94 school year. Because the transitional aid cap does not apply, the budget per pupil in all districts will be at least $3,600 in the 1993-94 school year and, very likely, all districts will receive some weighting which will cause the disparity to shrink. However, the disparity will almost certainly continue at the rate of several thousand dollars per pupil. Under the analysis in *Horton III*, the question is whether these disparities have a rational basis to a legitimate state purpose and whether the disparities are so substantial that the goal of equalization is undermined.

F. Rational Basis Should Be Applied

After examination of the rationales of these decisions, the holding in this case is that the rational basis test should be applied to the challenges offered by the Plaintiffs. The analysis of the courts applying a rational basis test is more persuasive. Second, the court adheres to the guidance of the United States Supreme Court in *Rodriquez* and the courts of other states in cautioning against the strict scrutiny analysis in this context. Further, while there may be a fundamental right to the constitutional guarantee of an education, the legislature met this right and the lesser rational basis standard should be applied to the examination of the equality of the financing. *Skeen v. State of Minnesota*, 505 N.W.2d 299, 315 (Minn. 1993); *Kukor v. Grover*, 148 Wis. 2d 469, 436 N.W.2d 568 (1989); *Shofstall v. Hollins*, 110 Ariz. 88, 515 P.2d 590

(1973). Finally, the Court finds that *Knowles* binds the court to such an analysis even though the decision did not expressly discuss the issue of whether a fundamental interest was involved.

If any deviation from a traditional rational basis test is justified, at most, it would be along the lines of the *Horton III* analysis.

G. The Parameters of the Rational Basis Test to Be Applied to the Act

The Kansas Supreme Court has adopted the United States Supreme Court's statement of the rational basis test:

> "[T]he Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it."

Farley v. Engelken, 241 Kan. 663, 669, 740 P.2d 1058 (1987) (quoting *McGowan v. Maryland*, 336 U.S. 420, 425-26, 6 L. Ed. 2d 398, 81 S. Ct. 1101 (1961).

The first inquiry, therefore, is whether there is statutory discrimination. Second, is there a state of facts which reasonably justifies the discrimination? The answer to the

first inquiry is "yes". The Act does create classifications which result in funding disparities. For example, in the first year under the Act, the range of general fund budget per pupil extended from a low of $3,061.71 to a high of $10,157.14. In the second year, the gap will narrow with all districts having a minimum budget per pupil of $3,600. This narrowing reflects significant improvement over the disparities in spending under SDEA. It is heartening to observe the decrease in the number of districts varying from the statewide average expenditure per pupil. In 1992-93 about two-thirds of the districts were within $125 of the weighted spending average for the state. Despite these strides, a spending gap will still exist.

Since there is a disparity, the next inquiry is necessary. Is there a rational basis to justify the statutory discrimination? In undertaking this analysis it is important to note that dollar for dollar uniformity is not required by the constitutions. Classifications which result in disparate spending are constitutional if rationally related to a legitimate objective. For example, differing levels of spending may be rationally based if the formula is accommodating differing circumstances with the goal of equalizing educational opportunity. Educational needs vary child to child, school to school. Spending to accommodate those needs will necessarily vary as well.

The Act is premised upon that concept; it allocates different amounts of money in an effort to provide all pupils, regardless of educational needs, with equal educational opportunity. To adjust for the differing needs, the legislature created classifications for at-risk, vocational, and bilingual students and for students who must be transported, who attend a low enrollment district, or who

attend a new facility. Districts receive weighted or increased per pupil funds for each classification for which a student may qualify. As a result, different districts receive different levels of funding per pupil. In the 1992-93 school year, ninety-six percent (96%) of the variation in spending in Kansas resulted from the various weighting factors, the most significant of which is the low enrollment weighting.

Did the legislature carve the particular classifications in a constitutional manner when selecting methods of accountability, excluding certain students or districts, and establishing the numerical weight in the various student or enrollment categories? Plaintiffs argue the legislature did not create constitutional classifications because the legislature based the determinations upon invalid data and not upon scientific studies or, at least, information which was not tainted by the disparities of funding which existed under SDEA. Although the data available to the legislature varies from classification to classification, the type of data utilized was historical financial information (primarily for one year), weights from other states, and the report of a special committee on pupil weights which had consulted with an educational expert. Weaknesses and fallacies exist with each of these data bases. Further study, including scientific evaluations, may have made the formula more mathematically precise. However, such precision is not required.

> This court has stated that "[e]stablishment of classification with mathematic precision is not required." *State ex rel. Schneider v. Liggett*, 223 Kan. 610, 619, 576 P.2d 221 (1978). To the same effect, the court quoted a dissenting opinion of

> Mr. Justice Holmes: " ' . . . [W]hen it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the legislature must be accepted unless we can say that it is very wide of any reasonable mark.' " 223 Kan. at 619 quoting *Louisville Gas Co. v. Coleman*, 277 U.S. 32, 41, 72 L. Ed. 770, 48 S. Ct. 423 (1928). A statutory classification that has a reasonable basis is not violative of the due process clause simply because it is not made with mathematical precision. . . . In *Henry*, the court stated that "[t]here must be some difference in character, condition, or situation, to justify distinction. . . . ; otherwise, the classification is forced and unreal, and greater burdens are, in fact, imposed on some than on others of the same desert". (Citation omitted). 213 Kan. at 753. Although the classification need not be mathematically precise, it must have a rational basis.

Thompson v. KFB Insurance Co., 252 Kan. 1010, 1021, 850 P.2d 789 (1993).

Nor is it required that a scientific study support the legislative policy determinations. *Cardella v. City of Overland Park*, 228 Kan. 698, 702, 620 P.2d 1122 (198) [sic] (due process analysis) (citing *Ginsberg v. New York*, 390 U.S. 629, 641-43, 88 S. Ct. 1274, 20 L. Ed. 2d 195 (1968)).

Given this analytical framework, the various weighting factors and the local option budget must be examined to determine (1) whether there is a character, condition, or situation to justify having the weightings and, therefore, the distinctions and (2) whether there is a rational basis for the amounts selected by the legislature.

1. Low Enrollment Weighting

a. Is There Disparate Treatment?

The low enrollment weighting factor accounts for the allocation of the most funds of any of the weights. Under the Act, 261 school districts out of 305 received low enrollment weighting. Although eighty-five percent (85%) of the districts received low enrollment weighting, this extra money is spread only over thirty-seven percent (37%) of the students. Hence, only slightly more than a third of Kansas students benefit from this weighting. Approximately eleven percent (11%) of the total general operating budgets adopted by school districts for the 1992-93 school year consisted of funds attributable to low enrollment weighting. A total of approximately $221 million was allocated to the low enrollment weighting. This is the equivalent of funding 61,475.7 students at the base state aid per pupil of $3,600. Today, ninety-six percent (96%) of the variation in spending in Kansas is accounted for by the weighting factors, the most significant of which by far is the low enrollment weighting.

b. Is There A Rational Basis?

Given this disparity, is there a rational basis for the low enrollment formula?

In order to examine this issue it is necessary to examine the formula and the development of the formula in more detail. Low enrollment weighting is, in part, a carryover from SDEA. Under the SDEA, as that statute existed at the time of repeal, there were five enrollment categories. K.S.A. 72-7046a(b)(1) (repealed by 1992 Kan.

Sess. L. ch. 280). The five categories were separated as follows: districts with enrollment under 200 (category I); districts with enrollment over 200 and under 399 (category II); two enrollment categories for districts with 400 enrollment to districts under 10,000 with the ranges of these third and fourth categories to be set by the state board of education each year (categories III and IV); and districts with 10,000 or more enrollment (category V). *Id.* A phase in to four categories was scheduled for the 1994-95 school year. *Id.* at (b)(2). The cutoffs for the various enrollment categories varied over the years as did the number of categories.

Under SDEA, operating expenses per pupil for the second, fourth and fifth enrollment categories were limited to the median budget per pupil in the respective category. The first category was allowed the median budget per pupil in the second category. For the third enrollment category there was a linear transition between the median budget per pupil in the second enrollment category and the fourth enrollment category. *Id.* at (c).

These concepts were adapted to become the low enrollment weighting under the School District Finance and Quality Performance Act. The Act requires the 1991-92 median budgets per pupil to be calculated at three points for use in a mathematical formula which produces weighting adjustments commensurate with enrollment variations. This procedure provides the basis for determining a "schedule amount" for each school district having a full time enrollment under 1,900.

(1) The Smallest Enrollment Category

The 1991-92 median budget per pupil of districts having enrollments between 75 and 125 students serves as a "schedule amount" for districts with enrollments of less than 100. This median was $7,337. From this amount is subtracted $3,426 which is the 1991-92 median budget per pupil for all school districts with enrollment in excess of 1,900. The resulting figure is then divided by $3,426 and the quotient equals 1.141565. This quotient is the low enrollment adjustment for all school districts with enrollment under 100.

In school year 1992-93, there were three school districts with full time enrollment under 100. They are Nes Tre La Go USD 301, Herndon USD 317 and Mullinville USD 424.

(2) Districts Between 100-299 Full Time Enrollment

For school districts with enrollments between 100 and 299 students, the weighting is computed by using a linear adjustment from the median budget per pupil for districts with an enrollment of 75 to 125 students ($7,337) to the 1991-92 median budget per pupil of districts with an enrollment between 200 and 399 ($5,406). The difference between these two figures ($1,931) is divided by the enrollment range to obtain the adjustment factor (9.655) applicable to school districts in this category. This adjustment factor is the linear adjustment used in the calculation of each school district's low enrollment weighting.

There were 58 school districts which had full time enrollment between 100 and 299 students during the 1992-93 school year.

(3) Districts Between 300-1,899 Full Time Enrollment

For districts with enrollments between 300 and 1,899, the weighting is computed on the basis of a linear adjustment from the 1991-92 median budget per pupil for districts between 200 and 399 ($5,406) to the median of school districts with enrollment of 1,900 or more ($3,426). The difference between these two median amounts is $1,980. This amount ($1,980) is divided by the enrollment range (1,600). The resulting quotient equals the adjustment factor of 1.2375. This adjustment factor is then used to compute the low enrollment weighting for school districts with an enrollment between 300 and 1,899 based upon the particular enrollment of a district in that category.

There were 200 school districts with full time enrollment between 300 and 1,899 during the 1992-93 school year.

(4) Former Category IV and V Districts

Under the Act, those districts which were category IV or V school districts under the SDEA do not receive any low enrollment funds. The Special Committee on Pupil

Weighting and the Governor's Task Force both recommended that aid in these categories be continued, but that there be a merger of the two categories.

c. The Educational Basis For Low Enrollment Weighting

Throughout the trial, there was little argument with the justification for low enrollment weighting in certain, necessarily small districts. Evidence established that low enrollment weighting recognizes and compensates for the higher fixed and operating costs per pupil necessary to provide an educational program in low enrollment districts. Such costs include basic educational programs and services, repair and maintenance of facilities, administration, support and instructional staff, equipment, and other overhead. It was also recognized that because of student sparsity, many Kansas public school districts are necessarily small. Consolidation of such districts is not feasible. Small districts (which almost always have small schools) are unable to achieve the efficiencies or economies of scale normally associated with large enrollment schools and school districts. Such small districts must have more revenue per pupil than large districts if they are to offer comparable educational programs. In general, there is a rational basis for a low enrollment weighting.

The next dispute is whether the legislature has carried the scheme too far. Is there a rational basis for providing the weighting to a school with an enrollment of 1,899 students but not for a district with 1,900 students?

One of the considerations in resolving this question is whether there was a rational basis to include eighty-

five percent (85%) of the districts in a "weighting". One expert indicated that this degree of inclusiveness reveals the basis for the weighting is skewed. The evidence was that if there was a need for such a high degree of educational spending, then the base state aid per pupil was artificially low. If so, this would operate to the detriment of the prior category IV and V districts which are omitted from the weighting and are operating with an artificially low base state aid per pupil.

More compelling is the lack of evidence that there is an educational basis for extending the low enrollment weighting to the larger of the districts included in the low enrollment weighting. Dr. Herbert Walberg, an expert called by the Defendants, has written:

> It is important to distinguish between spending efficiency and production efficiency or between how much is spent and how well it is spent. It appears that very small districts, say those with less than 300 students and specifically those with less than 200 spend more per student than larger districts because of school board, superintendent, principal and some minimum staff activities and equipment are needed no matter how small the district and because low enrollment districts are likely to be in sparsely settled areas which require more transportation. Per student costs of districts with 500 to 5,000 students and over, however, differ very little, and previous research suggests that smaller districts obtain more achievement value per dollar.

Tr. 3275-76. Under this analysis, there is no educational basis for providing a weighting to those districts with an enrollment above 500. When asked about Dr. Walberg's

writing, another of the Defendants' experts testified: "I agree with most of it. I don't agree with his 500 number. I think he breaks it off too small." Tr. 3276. The expert did not provide a specific number, however. Other experts also substantiated that the enrollment cutoff was much higher than could be justified because of efficiency costs attributable to smallness. Additionally, the evidence was that there is no study or learned writing which supports a theory that school districts up to the size of 1,900 students suffer from inefficiencies because of economy of scale which justify distinguishing this category of middle sized districts from large districts.

There was evidence that economy of scale issues exist for all districts, including larger districts. For example, two witnesses who were superintendents of medium-size districts, one a district of 1,450 (B. Neunswander trial testimony, Tr. 3140-3141, 3144) and the other a superintendent in a district of 1,700 (Curran trial testimony, Tr. 3368-70), testified that there were additional costs because of the size of these districts. However, there was also testimony from a representative of the Wichita district which persuasively indicated that large districts incur special costs not found in smaller districts because of the large size and special problems which are unique to being big.

Hence, there is justification for weighting enrollment for all districts, compensating each for the various economy of scale issues arising in that particular enrollment category. Alternatively, much like is done in many other states, there is a rational basis for the very small districts to receive a weighting.

Additionally, it was suggested the low enrollment weighting could be justified as an adjustment for higher costs because of sparsity, a weighting which the legislature chose not to include. Persuasive evidence was presented that it costs more to operate districts which are located away from major population centers due to increased costs of encouraging teachers and other professionals to locate in a sparsely populated area and from other costs not which increase because of sparsity. However, the evidence established that in Kansas sparsity did not have a strong relationship to the low enrollment weighting. The correlation between sparsity and smallness was 0.5 or 0.6. Hence, only approximately twenty-five percent (25%) of smallness is explained by sparseness. Examples of the disparity in adjoining districts located in the same county reveal that sparsity is not the rational basis for the low enrollment weighting.

In conclusion, the record does not contain a rational basis grounded upon education theory for distinguishing between districts larger than 1,900 and smaller schools, especially those districts with an enrollment between 400 and 1,899 students. The lack of support for the larger schools is significant because only about twenty-three percent (23%) of the districts receiving low enrollment weighting fall into the two smallest categories of districts receiving the weighting. Hence, more that [sic] three-fourths of the monies spent for low enrollment is received by schools which are in the largest category of the weighting.

d. Historical Basis

The strongest support for finding a rational basis for the low enrollment weighting is the argument that the weighting is based upon historical expenditures. As noted above, under SDEA schools of different sizes received different levels of funding. Thus, for a long period of time Kansas has recognized that there are different costs associated with school size.

When the 1991-92 costs are graphed, the costs are quite high for small schools with a decreasing cost which flattens out on the curve. There was debate in the legislature as to precisely where the costs flattened, but generally it was in the range of 1,800 to 2,000 students. Finally, the legislature made the cutoff at 1,900. The graph then illustrates that after the flattening at about 2,000, the curve rises again at the level of 10,000.

The relationship of this curve to the enrollment categories under the SDEA cannot be ignored for two reasons. First, as noted earlier, the application under the current Act differs from the consideration under the prior statute, the SDEA, where all schools received some funding based upon size. Consistent with this, both the Special Committee on Pupil Weighting and the Governor's Task Force recommended a weighting following a linear curve which would include all districts.

Second, the curve upon which the weighting is based flattens at the point of the category IV districts under SDEA, the category which the legislature repeatedly recognized as the category which had been underfunded.

Because of the underfunding of this category, the historical data was called into question by the legislature itself. Exhibits 1005 and 1009, as well as other portions of the legislative record, contain evidence of the substantial disparity impacting the fourth enrollment category, which in 1989-90 consisted of districts with enrollments of 1,800 to 9,999.9 students. For example, in the 1991 interim report "Regarding Proposal 35-School Finance", the committee report concluded: "For a variety of reasons, there very quickly and somewhat unexpectedly developed a rather significant gap between the median budgets per pupil in the fourth and fifth categories, with the median in the fifth enrollment category being the higher amounts (currently this gap is about 12.7 percent)". The committee reviewed the past attempts to rectify the problem and reported: "Due to the application of very restrictive budget limitations in recent years, and for the 1990-91 school year, suspension of the use of the usual SDEA formula provisions, these fourth enrollment category median adjustments have had a much more limited impact than otherwise would have been expected to occur". In discussing ways to deal with the problem, the committee warned: "It must be remembered that it will take longer for fourth enrollment category districts to gain full parity. . . . " Report of Kansas Legislative Interim Studies to the 1991 Legislature, Regarding Proposal No. 35 – School Finance, Conclusions and Recommendations, ¶ 3.

The evidence presented to the court documented the disparities which had evolved under SDEA to the detriment of the fourth enrollment categories. In 1981, the category IV school districts were split off from the other

categories. At the time there was a disparity of approximately $3,000 between the high and low spending districts in Kansas. Over the years the spread grew. In the last year of SDEA, the disparity was approximately $7,000.00.

At the same time, the disparity in mill levies increased. For example, in Newton, one of the representatives of the category IV districts, the mill levy in 1981-82 increased from 30 mills to 40 mills. By the last year under SDEA, the mill levy in Newton was 89 mills.

The evidence before the court was that the category IV districts were dramatically affected by the disparity in funding. In the districts represented by the Newton Plaintiffs, evidence was that the textbooks and libraries of many of the districts were outdated. Technology is not as available as in other Kansas schools. Supplies, labs, and similar materials were inferior to other districts. In comparison to neighboring districts, these districts suffered higher dropout rates and lower test scores. Hence, not only are the disparities in the funding evident on paper, the disparate impact upon the educational process is also very evident.

These disparities were further documented by Dr. Van Mueller, an expert called by the Newton Plaintiffs. Dr. Mueller studied six-paired districts. In Harvey County, Dr. Mueller compared Newton with the Hesston school district seven miles away. In Leavenworth County, the Tonganoxie school district was compared with the Leavenworth school district. In Ellis County, the Hays school district was compared with the Ellis school district. One of the districts in each of the pairs received low

enrollment weighting, the Plaintiff district did not. The study revealed substantial disparities.

For example, Newton in Harvey County has an actual enrollment of approximately 3,400 students. Hesston, located seven miles from Newton had an actual enrollment of approximately 790 students. Hesston receives a weighting of an additional 324 pupils for low enrollment weighting under the new law. This translates to $1,400 more general fund budget per pupil than the Newton budget per pupil. For each class of twenty-five (25) students this amounts to approximately $35,000. Primarily as a result of the low enrollment weighting, Ellis receives approximately forty-two percent (42%) more in additional resources per pupil than Hays while the Hays taxpayers pay a thirty-eight percent (38%) higher tax rate. Dr. Mueller's analysis revealed disparities in the quality of education, whether that disparity is measured on an input or output basis.

e. No Rational Basis for the Weighting

The disparities are significant and were recognized by the legislature. These disparities erode the rationality of relying upon historical expenditures. Further, the low enrollment weighting in the statute has a different history than other weighting factors. The historical costs per pupil upon which low enrollment weighting is based were controlled by the legislature and the formula the legislature designed, not upon actual need.

Despite recognizing the problems with relying upon the past expenditures, the legislature did not analyze

whether a closing of the gap of the disparity impacting fourth enrollment districts would have affected the curve upon which the weighting was based. Had the fourth enrollment districts been allowed to regain the 12.7 percent gap, the curve might have looked quite different. Since the formula is based upon a linear curve, districts above and below the former category IV cutoff are adversely weighted.

Hence, while mathematical precision is not required under the court cases applying the rational basis test, it cannot be said to be a reasonable justification to look at historical data which the legislature itself has questioned and indicated reflects disparities which need to be cured. This is especially true when there was no expert opinion supportive of the classification or educational justification for the distinctions. Furthermore, if the *Horton III* or a similar analysis were applied, it must be concluded that the Act, at least in this respect, does not repair the disparities but perpetuates the prior inequities. While equality in dollars and even educational "sameness" is not necessary, inequality in educational opportunity cannot exist unless a rational reason exists for the disparity. The Act may not have caused these disparities, but it certainly perpetuates disparities which arose under the SDEA.

f. Severability

Since the low enrollment weighting perpetuates the inequities which arose under SDEA and lacks a rational basis, the weighting is unconstitutional. Due to this holding, the question of severability arises. The statute contains a severability clause, K.S.A. 72-6440, quoted above.

In *Felten Truck Line v. State Board of Tax Appeals*, 183 Kan. 287, 327 P.2d 836 (1958), the court stated the test to be applied in determining whether the clause can be applied.

> Whether a court may sever an unconstitutional provision from a statute and leave the remainder in force and effect depends on the intent of the legislature. If from examination of a statute it can be said that the act would have been passed without the objectional portion and if the statute would operate effectively to carry out the intention of the legislature with such portion stricken, the remainder of the valid law will stand. Whether the legislature had provided for a severability clause is of no importance.

Id. at 300. In *State ex rel. Marshall v. Consumers Warehouse Market, Inc.*, 185 Kan. 363, 343 P.2d 234 (1959), the court stated "this rule obtains only where the two parts are separate and independent. . . . " *Id.* at 372 (quoting *Central Branch U.P.R. Co. v. Atchison. T. & S.F.R. Co.*, 28 Kan. 453, syl. ¶ 1. *See also Thompson v. KFB Insurance Co.*, 252 Kan. 1010, 1024, 850 P.2d 773 (1993).

The severability provision of the Act states it shall be "conclusively presumed that the legislature would have enacted the remainder of the Act without such invalid provision. K.S.A. 6440(a). However the legislative record and the significance of this provision overcome this presumption.

The loss of the $221,312,520 of funding to Kansas students would be devastating, especially to those districts which receive a large amount of these funds. The loss of these funds could result in valid arguments

regarding the suitability of the financing. Because of the significance, the weighting does not operate independently or separately from other provisions and cannot be severed. Further, the legislative history reflects that support for the Act was dependent upon the level of financial support to the districts. Deleting the provision would undermine this legislative intent.

Finally, to strike the provision would be overly broad since the concept of the weighting is not constitutionally defective, only the application of the concept is faulted. Upon steps being taken to assure that all schools are receiving the appropriate base level of funding rather than level being achieved through an artificial weighting which was perpetuated by past disparities, the weighting could be utilized. The construction of the appropriate weighting will require legislative attention. Given that necessity and because of the impact of this ruling, this holding will be stayed until July 1, 1993 [sic], so as not to impact the current budget year.

2. Local Option Budget

The Plaintiffs also argue the local option budget provisions violate the equal protection provisions. The Plaintiffs' arguments are twofold: (1) the mere existence of the provision results in disparate impact and (2) the equalization component of the formula results in disparate impact.

As more fully discussed above, under the local option budget a local school district may increase its budget by up to twenty-five percent (25%) of the district's

state financial aid. This local option budget is funded through local property taxes. However, if the district's assessed valuation per pupil is at or below the seventy-fifth (75th) percentile of the assessed valuation per pupil statewide, the district will receive supplemental general state aid in the proportion of the district's assessed valuation per pupil for the prior year to the seventy-fifth (75th) percentile of assessed valuation per pupil statewide for the prior year.

In attacking the provisions, the Plaintiffs assert different positions. The Newton Plaintiffs object to the inclusion of the provisions in the Act, arguing that if the financing is "suitable" there is no need for the additional funding authority which results in increased disparity in spending. Other Plaintiffs argue that the option should be unfettered so that district spending is not limited. Several of the Plaintiffs argue there is no rational basis for a cutoff at the seventy-fifth (75th) percentile.

a. Is There a Rational Basis for Having a Local Option Budget?

The legislative history reveals several purposes for the local option budget: (1) to account for the differences in needs and costs from district to district; (2) to reduce spending differentials while accommodating local needs and (3) provide some degree of local control of finances. The evidence reveals that each of the goals was met, at least as of the 1991-92 [sic] school year.

First, the provisions allow flexibility in the formula to account for local variations. The premise of this Act is that there should be substantial equality in spending, but

there must be recognition that needs vary. The concept of weighting is that needs vary student to student, location to location. In other words, some students cost more to educate than others.

The legislative and judicial records are replete with evidence of differing needs. For example, during the trial the Southwestern Districts persuasively argued that remoteness significantly influenced the costs associated with attracting teachers and paying for services such as technical assistance for computers. To account for the difficulty in attracting teachers, many districts have provided higher salary and benefit schedules. Other differences arise because of the geographic distances to culturally and educationally enriching opportunities which districts may wish to make available to students, including commonly accepted extra-curricular activities such as debate, forensics, musical competitions, and athletic events. Larger districts cited security concerns. Cost of living varies across the state. Special community needs or concerns may exist.

Accommodation of these various needs is not at odds with the constitution. When the revisions to article 6 were proposed, an alternative of requiring "uniformity" was presented and rejected by the drafters. What is required by the Kansas constitution is equal funding unless a rational basis exists for a disparate classification the accommodation of which results in an equal educational opportunity. To accomplish this, some expenditure disparities will exist.

Allowing for these variances does not necessarily result in spending disparity. In fact, the evidence

presented at trial indicated that the impact of the local option budget was consistent with its intended purpose of narrowing the range of spending per pupil. In 1992-93, the utilization of the local option budget lowered the coefficient of variation from .1933 to .1748, a reduction of almost ten percent (10%). The reduction results from greater utilization of the local option budget by low spending districts than by higher spending districts. Hence, while the long-term effects of the local option budget cannot be assessed because of the limited number of districts which had the option available during the 1992-93 school year, the effect in the transitional year was to reduce the overall spending differences among Kansas public school districts.

With regard to the third legislative goal, there was also substantial testimony that the local option budget had played a significant factor in promoting local control. Those districts involved in a protest petition and subsequent election found a need to involve patrons of the district in a dialogue regarding expenditures and educational expectations.

Hence, the evidence establishes that, at this point in time, the provisions are rationally related to legitimate legislative goals.

b. Is There a Rational Basis for the State Aid Component?

Plaintiffs also attack the legislative decision to extend equalization through supplemental state aid only to districts at or below the seventy-fifth (75th) percentile of assessed valuation per pupil. Plaintiffs argue this is an

arbitrary cutoff which has no rational basis. The purpose, in part, of the equalization is to counteract any correlation between differences in spending and district wealth. Under SDEA, twenty-five percent (25%) of the variation in spending among school districts was attributable to school district wealth, that is the assessed valuation in the district for each student enrolled. Under the Act, only five percent (5%) of the variation in spending is attributable to wealth. Hence, at least at the current time (remembering that because of the transitional cap not all districts were eligible to utilize the local option budget when the experts prepared this analysis), there is not a significant correlation between district wealth and the disparities. As a result, there is not sufficient evidence to conclude that a demarcation at seventy-five percent (75%) has resulted in disparities because of wealth. A valid conclusion, therefore, is that the determinations to utilize the local option budget have arisen because of needs perceived to exist by local boards and their electorate.

Furthermore, it was not arbitrary and capricious to draw a line at seventy-five percent (75%). Eighty-four percent (84%) of the public school students in Kansas attend a school at or below the seventy-fifth (75th) percentile in assessed valuation per pupil. In comparison to other states' equalization formulas, inclusion of eighty-four percent (84%) of students in the guaranteed tax base mechanism is fairly high coverage. Those districts which are not included have considerably more district wealth than those districts which receive aid. Less tax effort is needed to raise the dollars determined necessary.

Hence, while the utilization of the seventy-fifth (75th) percentile may not be scientifically based, the goals

of the statute are being met and the cutoff cannot, therefore, be said to be so wide of the mark as to lack a rational basis.

c. Is There a Rational Basis for Capping the Option at Twenty-Five Percent?

Finally, Plaintiffs attack the local option budget because of what they argue is an arbitrary cap set at twenty-five percent (25%). The legislative record reveals a concern that the local option budget not develop into a mechanism which allows wide disparities in spending which strongly correlate with district wealth. Many courts, even those in jurisdictions such as Kansas which do not have uniformity requirements, have condemned disparities where such a correlation is evident. To guard against wealth-based disparities, the legislature made the policy decision to cap the option so that wealthy districts could not fund local schools at a level highly disproportionate to other districts' spending. Despite the cap, the Newton Plaintiffs argue that eventually there will be wealth-based disparities because poorer districts will not be able to afford to utilize the local option budget. There is some logic to this argument, especially in light of the history of SDEA.

However, even though logical, the course in the first year disproves the theory. The evidence is that the gap in spending lessened because of the local option budget. Further, statistical evidence does not show evidence of correlation between wealth and the local option budget as exercised by districts in 1992-93. Hence, based upon the evidence before the court there is a rational basis for the

cap and evidence that the goals of the legislature are being met.

3. Transportation Weighting

The transportation weighting was derived from the transportation aid formula under SDEA. There was little, if any, criticism of the formula in the legislative record or at the time of trial. As opposed to the enrollment category funding, there is nothing in the record to indicate that the formula should be questioned. In fact, there was evidence that the transportation formula was well constructed. Hence, in this circumstance, the historical basis is a legitimate justification for the weighting. Therefore, the court concludes there is a rational basis for the formula.

4. Other Weighting Factors and BSAPP

With regard to the other weighting factors and the base state aid per pupil amount, it must be remembered that the concept of equal protection " 'emphasizes disparity in treatment by a state between classes of individuals whose situations are arguable indistinguishable' ". *State ex rel. Schneider v. Liggett*, 223 Kan. 610, 613, 576 P.2d 221 (1978) (quoting *Ross v. Moffitt*, 417 U.S. 600, 609, 41 L. Ed. 2d 341, 94 S. Ct. 2437 (1974)). *See also Thompson v. KFB Insurance Co.*, 252 Kan. at 1016; *Stephenson v. Sugar Creek Packing*, 250 Kan. at 774-75. There is no evidence that the remaining weighting factors or the base state aid per pupil result in disparate treatment or classifications. All districts and all students are treated the same under

the application of these portions of the formula. Hence, there is no basis for an equal protection attack.

XVI. DOES THE ACT VIOLATE DUE PROCESS BECAUSE IT LACKS A RATIONAL BASIS?

The Blue Valley and Burlington Plaintiffs also attack these components of the formula as violating the principle of due process. Under the due process clauses of the United States and Kansas constitutions, a statute cannot be unreasonable, arbitrary, or capricious. As a result, the means selected must have a real and substantial relationship to the objective sought to be obtained. *Cardella v. City of Overland Park,* 228 Kan. 698, 701, 620 P.2d 1122 (1980). The standard for this determination is the same as the analysis under the equal protection clause: a determination must be made of whether a fundamental interest is affected by the statute and then there must be an application of the appropriate level of scrutiny, either strict scrutiny, heightened scrutiny, or the rational basis test. *Blue v. McBride,* 252 Kan. at 916. "[U]nless a statutory classification trammels fundamental personal rights or is drawn upon inherently suspect distinctions such as race, religion, or alienage, the constitutionality of statutory discrimination is presumed and the challenged classification will be upheld if rationally related to a State interest". *Id.* (citing *New Orleans v. Dukes,* 427 U.S. 297, 303, 49 L. Ed. 2d 511, 96 S. Ct. 2513 (1976)).

As has already been analyzed, no inherently suspect distinctions are drawn under the statute. Hence, as with the equal protection analysis, the rational basis test should be applied. The determinations relating to the low

enrollment weighting, the local option budget, and the transportation weighting apply under a due process analysis also and will not be repeated.

The Plaintiffs argue that there is no rational basis, and certainly no compelling basis for any of the other weights or for the base state aid per pupil. The defendants and Blue Valley entered into a stipulation regarding what was considered by the legislature in arriving at the various weights. The district budgets for the 1990-91 school year were provided the legislature. Generally, these were the historical costs and the recommendation of Dr. Odden. The Plaintiffs argue that the only method of determining the appropriate weights would be a comprehensive study of the real costs of the various programs, not the artificial expenditures controlled by state budget provisions. The Plaintiffs note that Dr. Odden and the legislative research department recommended that studies be conducted. Further, the Plaintiffs argue that the only information available to the legislature as a whole was 1991-92 budgeted amounts. Plaintiffs urge that this is not an adequate or accurate measure of actual costs, especially in light of the fact that school districts knew unspent monies would be lost at the end of the 1991-92 budget unless transferred into certain accounts. Hence, Blue Valley and Burlington argue the data is artificially high.

While a comprehensive study of the costs of the various weights might have been a superior method for determining weights, nothing requires the legislature to use the most accurate method available. As was true under the equal protection analysis, that degree of precision is not required. Rather, the legislative determination

must be accepted unless it has no rational basis and is "very wide of any reasonable mark". *Thompson v. KFB Insurance Co.*, 252 Kan. at 1021 "[T]he law does not require scientific studies to support a legislative decision". *Cardella v. City of Overland Park*, 228 Kan. at 702.

A. Bilingual Weighting

The factual or empirical data which served as the basis for K.S.A. § 72-6413, which specifies bilingual education program weighting of 0.2, was limited to (a) the recommendation of Dr. Allen Odden and (b) some historical data from the 1990-91 school year reflecting expenditures per pupil by some Kansas school districts for bilingual education. The data was compiled by the Kansas State Department of Education from records pertaining to its Educational Excellence Grant program (K.S.A. § 72-9901 *et seq.*). Since the data derived from grant statistics, the data was not artificially controlled by prior legislative decisions or by the fund transfers made in anticipation of the passage of the Act. Hence, the historical data serves as a rational basis for the weighting.

In addition, the rational basis for the determination is supported by the recommendation from Dr. Allen Odden to the Special Committee on School Finance Relating to the Pupil Weighting System (often referred to in the record as the Committee on Pupil Weights). Dr. Odden outlined the research base regarding the most successful methods for teaching students who do not know or are not proficient in the English language. After his analysis, Dr. Odden concluded the extra cost to fund the reported

program is about 20 percent, i.e., an extra weight of 0.2. Exhibit 2008, p. 9.

In its final report, the Committee noted Dr. Odden's conclusion, but recommended that bilingual students be counted as 1.1 under a weighting system. Exhibit 2010, p. 3. The legislature in adopting the Act chose the higher of these figures (K.S.A. 72-6413(a)), the cost reported by Dr. Odden as the cost associated with the "best way to teach students. . . . " Exhibit 2008, p. 8.

Hence, the legislature chose a weighting, 0.2, two times the historical costs and a weighting which had been recommended by an expert as the optimum. Given this record, the court concludes that there was a rational basis for the weighting.

B. Vocational Education

The factual or empirical data which served as the basis for K.S.A. § 72-6413, which specifies vocational education program weighting of 0.5, was limited to per pupil expenditures of area vocational and technical schools in Kansas for the 1990-91 school year. This is data derived from a source not funded under the school finance formula and, therefore, not tainted by the inequities of the formula. After examining this data, the Special Committee on Pupil Weights made the following observation in its preliminary report:

> *After computing costs associated with vocational programs at the area vocational-technical schools, it was determined that vocational education students should be counted an additional .5 if they are in an approved vocational education program.*

Id. (emphasis by the Committee). Dr. Odden supported this weight. Exhibit 2008, p. 10.

Subsequently the Committee changed its recommendation. In its final report the Committee stated:

> The committee discussed the inclusion of the number of vocational education students in the formula. Some vocational education programs have traditionally been more costly because of the amount of equipment and in many cases the low pupil/teacher ration [sic] necessary in training students. However, under the new federal Carl Perkins Act, the integration of academic and vocational courses and programs is very important and the cost of these programs whether academic or vocational, would be similar in nature.
>
> *It was the committee's recommendation that vocational education programs with the new Carl Perkins law has stressed the importance of the integration of the academic and vocational programs. Although some vocational students may cost more, the committee recommended vocational students be counted as 1.0 under the formula. It was also felt that unified school districts should have access to Vocational Technical Training programs.*

Exhibit 2010, p. 3 (emphasis by the Committee).

The legislature chose to count the vocational student as 1.5, or a 0.5 weighting, under the formula based upon a full time equivalency computation of the time the student was in an approved vocational education course. Since the legislature chose to fund the cost at a higher level than the committee recommendation and to fund

the actual costs at the level recommended by the expert, Dr. Odden, the Court concludes there was a rational basis for the weighting.

C. At-Risk Weighting

Blue Valley's attack on the at-risk weighting is two-fold: (1) the allegedly arbitrary determination of which students are included in the weighting and (2) the amount of the weighting. Both of these factors of the at-risk weighting are strongly tied to the recommendations of Dr. Allen Odden to the Special Committee on Pupil Weighting.

As previously noted, the weighting is based upon the number of students who qualify for the free or reduced lunch program. The Act does not prohibit participation in an at-risk program by students who do not qualify for the reduced cost lunches. Nor does the program mandate that all students who qualify for free or reduced lunches participate in the program. Hence, the district may receive reimbursement for a different number than actually participate in the program.

The Blue Valley Plaintiffs presented evidence that there was little correlation in the Blue Valley District between those students who were in at-risk programs and those who were eligible for the free or reduced lunch program. Hence, the Blue Valley Plaintiffs argued there was no rational basis for the classification.

The evidence before the court, including the testimony of experts, was that it is difficult to devise an ascertainable standard by which the state could audit the

number of eligible students and determine which students were at risk. Testing is a cumbersome process for such evaluation and is not necessarily a good indicator. A weighting system must forecast the number of students to be served by a program during the school year. This eliminates the ability to utilize actual students served during the course of a year as a basis. Further, there is a need to use an ascertainable criteria which avoids the incentive to misclassify pupils to increase funding.

In consulting with the Special Committee on Pupil Weights, Dr. Odden reviewed various methods for determining who should be included in an at-risk formula. After examining several options, including those utilized in other states, Dr. Odden recommended counting the number of students eligible for free and reduced lunches. Dr. Odden reported that need was a strong indicator of students at risk. He also noted that the criteria provided a number which could be monitored in a straight-forward manner.

At the trial, most experts agreed that while not a perfect criteria, eligibility for free or reduced lunch programs was an adequate indicator. As with Dr. Odden, some of the experts preferred the criteria over others because it was easily monitored and because of the general correlation between need and being at risk. Hence, the court finds that there was a rational basis for the legislature to utilize the criteria of those eligible for the free and reduced lunch program. The classification is relevant to the assessment of need and to the goals of the weight and is not an arbitrary classification.

With regard to selecting a specific numerical weight, the at-risk weighting, as opposed to other weightings, is not supported in the reports of Dr. Odden or the various committees. In Dr. Odden's report to the Special Committee on Pupil Weighting, Dr. Odden stated: "In reviewing weights other states have selected, an extra weight of 0.25 seems to be the modal policy". Exhibit 2008, p. 4. However, the Committee on Pupil Weight concluded no weight should be assigned, noting: "It was felt that at-risk programs in the regular school day during the school year should not receive an additional weighting, because of accountability difficulties". Exhibit 2010, p. 3.

According to the stipulation of the parties, the factual or empirical data which served as the basis for K.S.A. § 72-6414, which specifies at-risk pupil weighting of 0.05, was limited to (a) a range of the sums of money which the legislature wanted to spend on at-risk programs and (b) estimates of the cost for at-risk programs based upon some historical data from the 1990-91 school year reflecting per pupil expenditures by some Kansas school districts for at-risk student programs.

As to the first of these basis [sic], the Kansas Supreme Court in *Stephenson v. Sugar Creek Packing*, 250 Kan. 768, 830 P.2d 41 (1992), approvingly quoted the United States Supreme Court, in stating:

> "[T]his Court expressly has noted that 'a concern for the preservation of resources standing alone can hardly justify the classification used in allocating those resources.' *Plyer v. Doe*, [457 U.S.] at 227. We have insisted that such classification *themselves* be rational rather than arbitrary. [citations omitted]. Our cases thus make

> clear that something more than an invocation of the public fisc is necessary to demonstrate the rationality of selecting strikers, rather than some other group, to suffer the burden of cost-cutting legislation."

250 Kan. at 781 (quoting *Lyng v. Automobile Workers*, 485 U.S. 360, 376-66, 108 S. Ct. 1184, 99 L. Ed. 2d 380 (1988)). Hence, this first justification cannot serve as a basis for the weighting.

Regarding the second basis, it must be noted that Kansas had not previously funded at-risk programs through categorical aid. Nor were there any definitive studies of the extra costs for at-risk students. Exhibit 2008; Exhibit 7004, Report and Recommendation of the Special Committee on School Finance Relating to the Pupil Weighting System, dated July 22, 1991. What data was available was compiled by the Kansas State Department of Education from records pertaining to its Educational Excellence Grant program (K.S.A. § 72-9901 *et seq.*) which reflected grants for at-risk pupil programs.

Without a strong historical data base and with concern over the accountability factor, the special committee reported that the size of the at-risk weight was seen by the committee as more of a function of the ambitiousness of the compensatory education program to be financed by the weight rather than a precise reimbursement for the actual costs. Hence, the basis of the weight, as articulated by the legislature, was to be an incentive to the development of at-risk programs and inclusion of students in those programs. There was some evidence that the purpose was being furthered. Testimony from many of the superintendents who testified evidenced that districts

were providing the services to students in return for the increased aid. Statistics indicate that in 1992-93 there were 629 new or enhanced programs for at-risk students. The legislative object is being met.

The level of this incentive or the degree to which it should operate is a policy decision not to be interfered with by the court. Hence, based upon the purposes articulated, a rational basis exists for the level of the weighting.

D. New Facility

The new facility weighting is one which is available for the first two years a building is in operation. In order to qualify for a new facilities weighting, the district must have utilized the full amount of the local option budget authorized for the school year.

Under prior law, school districts had the ability to petition the state board of tax appeals for additional taxing authority to finance new facilities operations. In the 1993 amendments to the Act, the legislature revived this mechanism. Effective July 1, 1993, districts may levy an ad valorem tax on the taxable tangible property of the district each year for a period of time not to exceed two years in an amount authorized by the state board of tax appeals. 1993 Kan. Sess. L. ch. 264, new § 14.

It was the Blue Valley district which had urged the legislature to adopt the new facilities weighting. Blue Valley presented evidence to the legislature of the extraordinary costs of opening a new facility. The Blue Valley study examined the extraordinary costs incurred

by three districts (Shawnee Mission, Olathe, and Blue Valley) in the opening of six grade schools from 1988 to 1992; four middle or junior high schools from 1988 to 1992, and two high schools, one in 1986 and one in 1992. These costs ranged from $1,000 to $3,030 per pupil.

The legislature, in both 1992 and 1993, required exhaustion of the local option budget before the weighting was available. This requirement manifests a legislative intent that the weighting not pick up the entire costs of a new facility. The legislature in allowing a weighting of one fourth (0.25) of the base state aid per pupil (amounting to $900 per pupil) and recognizing the utilization of the local option budget (another $900), funded the new facilities weighting within the range of the per pupil cost spread documented by Blue Valley. While the amount may not be at the high end of the actual costs, it does not lack any factual basis since it falls within the historical range. Hence, the court finds a rational basis for the figure.

E. Base State Aid Per Pupil

The Plaintiffs also argue there is no rational basis for the base state aid per pupil. The factual or empirical data which served as the basis for K.S.A. § 72-6410(d), which specifies base state aid per pupil of $3,600, was limited to (a) historical expenditures for public education in other states and (b) data from several years indicating historical expenditures per pupil for public education in Kansas. Again, Plaintiffs argue this data is not sufficiently comprehensive nor accurate to serve as a rational basis.

Historical data reflects a median budget per pupil in 1989-90 of $4,622.82, of $4,786.597 [sic] in 1990-91 and of $4,857.90 in 1991 and 1992. These do not include categorical aid such as special education, vocational education, transportation, food service, adult education, driver training, at-risk student aid, or state aid for bilingual education. These historical figures are significantly more than $3,600. However, such a comparison is an apples to oranges comparison because of the impact of weightings. The evidence established that most districts experienced a higher budget per pupil under the Act than in the prior year. This fact establishes that there was a rational basis for the number as it would be utilized under the new formula with the weighting.[3]

XVII. DOES THE ACT VIOLATE THE CONSTITUTION BY INCLUDING MULTIPLE SUBJECTS IN ONE BILL?

Article 2, section 16 of the Kansas constitution mandates that:

> No bill shall contain more than one subject, except appropriation bills and bills for revision or codification of statutes. The subject of each bill shall be expressed in its title. . . . The provisions of this section shall be liberally construed to effectuate the acts of the legislature.

In applying the provision, the Kansas Supreme Court has advised:

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[3] Again, however, it should be noted that the loss of low enrollment weighting could severely impact the adequacy of $3,600 as a base state aid per pupil.

> Art. 2, § 16, of the Kansas Constitution should not be construed narrowly or technically to invalidate proper and needful legislation, and where the subject of the legislation is germane to other provisions, the act is not objectionable as containing more than one subject or as containing matter not expressed in the title. This provision is violated only where an act embraces two or more dissimilar and discordant subjects that cannot reasonably be considered as having any legitimate connection with or relationship to each other.

Harding v. K.C. Wall Products, Inc., 250 Kan. 655, 671, 831 P.2d 958 (1992).

Applying this test, the Supreme Court, selected a school related statute as an example of how comprehensive an act may be and still not violate the constitution:

> Look at the general act of 1876 relating to public education (ch. 122). Its title is, "an act for the regulation and support of common schools." Under this simple title there lies the entire statutory foundation of our public-school system, covering not only such matters as schools and school districts, and school officers and their duties, but matters so distantly related thereto as the disposition of the federal land grants for school purposes, and including such details as the mode of settlement and acquisition of school lands, duties of the state auditor and governor in relation to the issue of land patents, criminal proceedings and penalties for waste or trespass on school-land properties, etc. But thought [sic] the title to this act gives no hint of these far-reaching details, yet because they are mere details of the general scheme of the act for the

> effective regulation and support of common schools, and are germane and pertinent to the principal purpose of the act, they are not subject to constitutional infirmity under section 16 of article 2.

City of Wichita v. Board of County Commissions, 110 Kan. 471, 473, 198 P. 693 (1922).

The Supreme Court approvingly quoted this case in *State ex rel. Gray v. Board of Education of the City of Chetopa, Labette County*, 173 Kan. 780, 252 P.2d 859 (1953), when the plaintiffs complained that the subject of attachment of land to a school district was not expressly stated in the title of the act. The Court noted that the title covered general subjects such as school boards, school districts and their powers and concluded that the subject of attachment of property was not "incongruous", but rather "germane and pertinent" to the principal subject and purpose of the act. *Id.* at 785.

Chapter 280 of the 1992 Session Laws records the title of the Act as: "An Act concerning school districts; affecting the financing thereof and providing revenue therefor; relating to quality performance and accountability. . . . " A review of the Act reveals that all provisions relate to financing public education and creating a new accountability standard for school districts. Even though different aspects of financing are addressed, including a formula, mechanisms for funding the formula and accountability for receiving the funding, these topics are germane to each other.

Specifically, Plaintiffs argue the inclusion of amendments to various tax acts and the quality performance

issues violates article 2, section 16. However, when placed within the context of the test as stated in *Harding v. K.C. Wall Products, Inc.*, the provisions do not violate the constitution. Since the tax provisions are intended to, in part, provide the money to fund the formula, the two portions of the act have a "legitimate connection [and] relationship to each other".

Plaintiffs argue that even the legislature recognized that it had included at least two subjects in the bill. The legislative history to the 1993 legislation which amended the bill includes a report of the Kansas Committee on School District Finance and Quality Performance covering the committee's interim study of the Act. The Committee stated:

> The new school finance law provides that the enhanced sales and income tax revenues attributable to income and corporate income tax rate increases and sales and use tax increases and exemption removal be earmarked and used for general state aid to school districts. Perhaps the main reason for the earmarking was to prevent a challenge to the constitutionality of the legislation on the grounds that it violated the 'one subject' provision of the Kansas Constitution. In other words, earmarking the new tax revenues for general state aid to school districts provided what was considered by some to be the necessary nexus between the law's taxing provisions and its school aid distribution plan. Now that the bill has become law, there is no constitutional imperative to continue the earmarking.

While this report does reflect the concern, it also shows that there is and that there was intended to be a

nexus between the formula and the new tax revenues. There was a legitimate connection between the provisions. Further, there is reflected a recognition by the legislature of the inclusion of the various topics. It has been explained that the purpose of article 2, section 16 is to prevent "a matter of legislative merit from being tied to an unworthy matter, the prevention of hodge-podge or log rolling legislation, the prevention of surreptitious legislation, and the lessening of improper influences which may result in intermixing objects of legislation in the same act which have no relation to each other". *Garten Enterprises, Inc. v. City of Kansas City*, 219 Kan. 620, 622, 549 P.2d 864 (1976). The legislative record reveals all of the issues had merit and the combination of the various issues into one bill was not done surreptitiously. Rather, as already discussed, the legislative record and the testimony of the legislators before this court indicated that the combination occurred because legislators felt all of the issues were so connected they could not support one effort without the other.

Certainly, there is evidence of compromise. However, in reviewing the state's school closing statutes the Kansas Supreme Court recognized the statute was "a creature of compromise", but noted that compromise does not strip legislation of its rationality. Nor does compromise by inclusion of various provisions mean the legislation has been "log rolled". *Provance v. Shawnee Mission Unified School District 512*, 231 Kan. 636, 643, 648 P.2d 710 (1982).

The school finance formula, the accreditation provisions, the school reform provisions and the tax provisions

were legitimately connected and a reasonable compromise of the issues. The Act does not violate article 2, section 16.

XVIII. DOES THE ACT VIOLATE ARTICLE 11, SECTION 4?

Article 11, section 4 of the Kansas Constitution provides:

> The legislature shall provide, at each regular session, for raising sufficient revenue to defray the current expenses of the state for two years.

In *State ex rel. Dawes v. Bailey*, 56 Kan. 81, 82-83 (1895), the Supreme Court determined that this provision prohibited legislation which imposes a state property tax for a period in excess of two years. Section 27 of chapter 280 provides that boards of each district will levy an ad valorem tax at the rate of 32 mills for the 1992-93 school year, at a rate of 33 mills in the 1993-94 school year, and at a rate of 35 mills in the 1994-95 school year. The provision violates article 11, section 4.

However, the conclusion reached in *Bailey* is appropriate in this case. The legislation was not invalidated, rather the Court concluded "[i]t was a valid law for raising revenue for two years" and "[i]t was never a nullity, and the legislature had ample power to amend it". *Id.* at 83. Hence, all the provisions relating to revenue beyond the two year period were severed. Similarly, in this case the provision relating to the mill rate in the 1994-95 school year is not valid and will need to be separately enacted. The other provisions are not made a

nullity by the provision, especially in light of K.S.A. 72-6440. This holding is effective immediately.

XIX. DOES THE ACT RESULT IN A TAKING IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS?

The Burlington Plaintiffs allege that the provisions of K.S.A. 72-6431(d) violate the fifth and fourteenth amendments to the United States Constitution. K.S.A. 72-6431(d) provides:

> On June 1 of each year, commencing on June 1, 1993, the amount, if any, by which a district's local effort exceeds the amount of the district's state financial aid, as determined by the state board, shall be remitted to the state treasurer.

Those funds which are remitted are often labelled "recapture" funds. Once turned over to the State, these monies are deposited in the State School District Finance Fund and are remitted to those districts which do not have sufficient local effort to fully fund the district's state financial aid. The difference between the district's state financial aid and the district's local effort is the amount of "general state aid" to which the district is entitled. K.S.A. 72-6416.

Districts receive monthly general state aid payments in an amount the Kansas State Board of Education determines necessary to maintain operations during the month. In June, each district is paid the total amount of the entitled general state aid less the amounts distributed from July to May. K.S.A. 72-6417. The recapture funds

paid in June contribute to the June payment of general state aid.

Because the trial was conducted before audits could be completed for fiscal year 1992-93, the record contains only predictions or estimates of which school districts had local effort funds which exceeded that district's state financial aid entitlement. Because of this, the record is not entirely clear as to how many districts paid recapture funds to the state. Some portions of the record indicate that there are ten districts which had local tax efforts in excess of the district's state financial aid entitlement. Those districts were USDs Moscow 209, Hugoton 210, Ulysses 214, Lakin 215, Deerfield 216, Rolla 217, Burlington 244, Kaw Valley 321, Holcomb 363, and Satanta 507. Eight of those districts are Plaintiffs. Some portions of the record indicate there is an eleventh district in this category, USD 207, Fort Leavenworth. Because of Fort Leavenworth's unique status, it is often not included in statistical analysis and this may account for it not being included. There are also some indications that Deerfield did receive state aid and, therefore, should not be included in the list of ten. (See Exhibit 1306, p. 124). Whether the number is nine, ten or eleven, only approximately three percent (3%) of the districts contribute the estimated $14 million of recapture funds.

The concept of the recapture funds is to equalize ad valorem tax levies across the state and to treat the dollars generated as state dollars. As already noted there had been a wide disparity in mill levies under SDEA which the Act significantly decreased. For most taxpayers, the Act resulted in ad valorem tax relief. In 1992-93, under the Act, all school districts in Kansas except fourteen

experienced a reduction in ad valorem taxes when comparing 1991 total mill rates (general, capital outlay, bond and interest, and other) with 1992 total (general, supplemental general, capital outlay, bond and interest, and other). When comparing general mill levies, even fewer experienced a mill levy increase.

In 1991-92, the median total unified school district mill rate was 64.96. In 1992-93 it was 40.80. The recapture districts, excluding Fort Leavenworth, experienced the following:

	1991-92 Total Mill Levy	1992-93 Total Mill Levy	1992-93 Budget Per Pupil
Moscow USD 209	22.33	45.05	9,321.96
Hugoton USD 210	18.81	36.87	5,545.47
Ulysses USD 214	36.80	43.58	4,594.84
Lakin USD 215	34.53	40.60	5,805.11
Rolla USD 217	26.54	43.27	8,450.27
Burlington USD 244	15.54	38.85	5,326.55
Holcomb USD 363	38.97	43.84	5,360.39
Satanta USD 507	31.00	33.07	5,829.39
Kaw Valley USD 321	30.26	42.42	5,477.70
Fort Leavenworth USD 207	25.00	46.06	4,084.82
Deerfield USD 216	46.01	43.53	5,878.10

Statewide, the low total mill rate was 32.00, the median 40.80 and the high 80.65. Hence, each of the recapture districts are experiencing mill rates very near the statewide median and well below that experienced by some taxpayers in Kansas.

To raise to the level of the median, however, the taxpayers in the recapture districts suffered substantial tax increases. They now complain the money belongs to their respective districts and should not be shared, indeed should not be collected. The Burlington Plaintiffs argue a taking results when funds from one district are utilized in another district. In support of this contention, Burlington cites *Village of Norwood v. Baker*, 172 U.S. 269, 19 S. Ct. 187, 43 L. Ed. 943 (1898); *Morton Salt Co. v. City of South Hutchinson*, 159 F. 2d 897 (1947); and *Allison v. Board of Johnson County Commissioners*, 241 Kan. 266, 737 P.2d 6 (1987).

However, the language of one of these cases reveals that the cases do not support the Plaintiff's position. The Tenth Circuit in the *Morton Salt Co.* decision stated:

> It is no constitutional defense to a tax that the taxpayer is not directly benefited thereby, or is less benefited than others who pay the same or less tax. . . . [citations omitted]. For example, "every citizen is bound to pay his proportion of a school tax, although he has no children, *or is not a resident*, and this applies also to corporations. . . . " Cooley, [Taxation, 4th ed., vol. 1], Sec. 89, p. 214. The fact of living in an organized society carries with it the obligations to contribute to its general welfare, whether or not the recipient of particular benefits. Furthermore, the legislative determination that the property taxed

> will be benefited by the public improvement for which it is assessed is ordinarily conclusive.

159 F.2d at 900-01.

The essence of the Plaintiffs attack on the tax is that the taxpayers residing in the recapture districts pay taxes to educate students who do not reside within the recapture district. The example given by the tenth circuit directly addresses this question and concludes that such a situation is not unconstitutional. The reasoning implied by the tenth circuit persuasively responds to the parochial attitude that we pay taxes only for the education of "our" children: it is no more unconstitutional for all the taxpayers of the Burlington school district to pay taxes which benefit students throughout the state than it is for the largest taxpayer in the Burlington district, the corporate owners of the Wolf Creek Generating Plant, to pay any taxes toward education when those corporate owners have no children to educate in the public school system.

In today's mobile and heterogeneous society, each taxpayer benefits or suffers from the quality or lack of quality of the education received by Kansas students. Each of us receives an indirect benefit from the education from all Kansas school children. As one court stated:

> Education is the greatest agency of prosperity. If you are anxious for the prosperity of your people, then you will lose no time in giving them a "liberal" education. Intelligence is a great money maker.

Alabama Coalition for Equity, Inc. v. Hunt, No. CV-90-883-R (1993 Westlaw 204083) *50 (Ala. Cir. 1993). The taxpayers

in the recapture districts receive and benefit from contributing to the education of all Kansas students. The Act embodies a recognition that in the 1990's, the State cannot thrive with a parochial attitude of educating "our" children; in today's heterogeneous and mobile society each taxpayer benefits or suffers from the quality or lack of quality of the education received by all Kansas students. Education is the greatest vehicle available to the state to prepare our children to be the neighbors, parents, leaders, workers, taxpayers, citizens, voters, and patriots of tomorrow. Having small pockets of well-educated students does not support an economy or society in the 1990's and beyond.

Hence, taxpayers in the recapture districts receive a benefit. Further the mill levy paid in these districts does not result in a such a flagrant and palpable inequality between the burden imposed and the benefit received that it amounts to an arbitrary taking of property without compensation in violation of the fourteenth amendment. Total revenue recaptured from local sources for public education is about $14 million. This is less than two percent (2%) of the local tax levies generated statewide and less than one percent (1%) of the total funds generated statewide through all taxes and funds generated under the Act. In contrast in *Morton Salt Co.*, the tenth circuit was faced with taxpayers who were paying forty-six percent (46%) of the total burden but receiving no direct benefit from the assessment. Even when faced with that level of burden, the court determined it could not hold the statute unconstitutional until all facts relating to the relative benefits and burdens had been developed on the record.

More important to this analysis, however, is the proportion of taxes the taxpayers in the recapture districts are paying in relation to the rest of Kansas citizens and the amount of per pupil budget in these districts. Only seven of the district's mill levies exceed the state average, none by more than 6 mills. All are considerably below the state's highest mill levy. Burlington, the complaining district, is 1.95 mills below the state average. Six of the district's budget per pupil exceed the state average, a seventh is only approximately $9 below the average. At least five of the districts had at least $1,000 more revenue per pupil in 1992-93 than in 1991-92.

Hence, Burlington's argument highlights the tax inequities which had developed under the SDEA, but does not establish that under the current system any taxpayer is being burdened in disproportion to the benefits received. The Burlington district is levying a tax proportionate to the remainder of the state (1.95 mills below the median) while budgeting a per pupil expenditure proportionate to the remainder of the state (approximately $160 below the state median). Hence, the court concludes that the fifth and fourteenth amendments of the United States Constitution are not violated by the terms of the Act.

XX. DOES THE ACT FAIL TO OPERATE UNIFORMLY THROUGHOUT THE STATE AND THUS VIOLATE ARTICLE 2, SECTION 17?

Article 2 of the Kansas Constitution pertains to the legislative branch of our government. Section 17 provides as follows:

> § 17. *Uniform operation of laws of a general nature.* All laws of a general nature shall have a uniform operation throughout the state: *Provided,* The legislature may designate areas in counties that have become urban in character as "urban areas" and enact special laws giving to any one or more of such counties or urban areas such powers of local government and consolidation of local government as the legislature may deem proper.

The only prohibition contained in article 2, section 17 of the Kansas constitution relates to laws of a general nature which affect the people of the state generally. Such laws must apply uniformly throughout the state and, thus, must be *geographically* uniform. *See Stephens v. Snyder Clinic Association,* 230 Kan. 115, 127, 631 P.2d 222 (1981), *quoted with approval* in *State ex rel. Stephan v. Smith,* 242 Kan. 336, 380, 747 P.2d 816 (1987).

Article 2, section 17 does not require that a law of a general nature, in order to have uniform operation throughout the state, affect every community or individual alike.

> It is entirely competent for the legislature to adapt its laws general in their nature to general classifications, either of individuals, surroundings, or conditions, but such classification must always be a natural one, not an arbitrary or fictitious one.

State ex rel. Stephan v. Smith, 242 Kan. at 381 (quoting *Rambo v. Larrabee,* 67 Kan. 634, 644, 73 P. 915 (1903)).

A rational justification for treating various localities differently preserves the constitutionality of a statute

under an article 2, section 17 challenge. *See State ex rel. Stephan v. Smith*, 242 Kan. at 381. However, as noted above with regard to equal protection analysis, differential treatment cannot rest entirely upon financial or economic considerations. *Id.* at 382.

The Act is a law of a general nature. Thus, it is subject to the requirements of article 2, section 17. Burlington argues the section is violated. The argument is based upon several grounds:

1. each school district receives a different amount of the ad valorem tax revenue generated by the statewide mill levy;

2. each district's budget is different;

3. some districts receive state aid while others do not;

4. some districts must remit the recapture funds;

5. seven recapture districts are subject to reduction of the base state aid per pupil if the state revenue falls short;

6. one school district receives two pupil equivalency for those students at the Judge V. Riddel Boys Ranch; and

7. the ad valorem proceeds may be utilized to pay the principal and interest on bonds issued by cities pursuant to K.S.A. 12-1774 and not all districts have cities which have issued such bonds.

Burlington's first and second arguments, that each district receives a different amount of money and has a

different budget, adheres to the legislatively discarded paradigm of funding based upon school districts. The new model adopted by the legislature is one of funding per pupil. Each district, wherever located, receives the same amount per pupil as a district in which a similarly situated pupil (i.e., weighted pupil) attends school. Consequently, although per pupil spending may vary, that variance is not based on geographic disparities but rational distinctions relating to the needs of the student as recognized by the weighting system. Hence, the court concludes that in this regard the statute operates uniformly throughout the state and the variances are rationally based.

Burlington's third and fourth arguments relate to the receipt by some districts of state aid while other districts must remit monies from the ad valorem levies which are in excess of the district's needs. These situations reflect the uniformity of application throughout the state rather than show geographic disparity. Regardless of district wealth, all districts levy the same base rate of tax. This uniformity complies with article 2, section 17. That uniformity is not defeated by the fact that district wealth varies resulting in some districts needing state aid and others remitting funds. Rather, this is an indication of the uniformity which was so lacking under SDEA.

The uniform application of the Act is also illustrated by the fifth argument in which Burlington asserts a violation of section 17 would result if property-rich districts, which generate ad valorem revenues in excess of the district's budget, would receive a reduction in per pupil expenditures if the state did not meet its funding level.

Under the Act, all districts receive a uniformly distributed proportion of the shortfall. There is no distinction based upon the geographic location in a property rich district. Again, the statute has uniform application.

With regard to the sixth argument, the Act does distinguish the residents of the Judge James V. Riddel Boys Ranch, but it also requires that for the additional weighting the resident must be in the custody of the secretary of social and rehabilitation services. K.S.A. 72-6407(a). The purpose for the distinction is that, under the Act, persons in the custody of SRS and provided educational services at the state institution do not count in the definition of a pupil. Hence, the definition takes those at the Boys Ranch out of the operation of the definitional exclusion. Second, the provision creates a specific weighting tied to the additional needs of those children in the special circumstance of being at the Boys Ranch. The only basis for lack of geographic uniformity is the Ranch's location and the fact that this particular class of individuals do not reside in all school districts. The special weighting is rational given the unique circumstances and needs arising from that situation.

The final argument relates to the application of K.S.A. 72-6435 regarding disposition of ad valorem tax levy proceeds. This provision allows districts which have adopted local option budgets to levy an ad valorem tax to pay principal and interest on bonds for the financing of redevelopment projects under the authority of K.S.A. 12-1774. That statute gives "any city" the power to issue the bonds. Consequently, the provision is uniform throughout the state. While there will be districts with cities which have issued the bonds and others which have

not, this distinction does not arise from lack of uniformity in the wording or application of either K.S.A. 12-1774 or K.S.A. 72-6435.

Hence, the Act applies uniformly throughout the state and thus is geographically uniform in most respects. Where classifications do result in geographic disparities, those classifications have rational justifications. Consequently, the Act does not violate article 2, section 17.

XXI. OTHER ARGUMENTS

Originally, some claims were stated under section 5 of article 11 of the Kansas Constitution. However, no Plaintiff preserved this claim in the pretrial order. The pretrial order controls the subsequent course of litigation. *Seiben v. Seiben*, 231 Kan. 372, 376-77, 646 P.2d 1036 (1982). However, it if [sic] is determined that the issue is subsumed within one of the theories enunciated in the pretrial order, the court finds that article 11, section 5 is not violated.

Article 11, section 5 of the Kansas Constitution prohibits the levy of a property tax for one purpose and the use of the funds raised thereby for another purpose. That section requires the object of a tax to be stated in the tax levy statute. *State ex rel. Schneider v. City of Topeka*, 227 Kan. 115, syl. ¶ 3, 605 P.2d 556 (1980). Article 11, section 5 does not preclude a tax levy statute from having more than one object, so long as the legislature establishes a formula for the allocation of tax funds to each of the objects described in the tax levy statute. *State ex rel. Schneider v. City of Topeka*, syl. ¶ 4.

The provisions of Chapter 280 clearly prescribe the purposes for which the tax funds are to be used and the formula for allocation of the same. Consequently, the law does not violate article 11, section 5. *See School District No. 4 in Logan County v. Wallace County Commissioners*, 127 Kan. 793, 795, 275 P. 188 (1929).

Plaintiffs have made some additional arguments. However, some of those were not raised as issues in the pretrial order. Others raise serious policy issues. One of the issues voiced frequently during the trial was the "spend-or-lose" philosophy fostered by the Act which many felt was not fiscally sound. Also, citizens and legislators expressed concern that education would become lost in the swarm of demands upon state monies. Experts cited other jurisdictions which had suffered because of the competing demands. Others voiced concern that leaving so much in the hands of the legislature made it more difficult to predict the future and make long range plans.

These issues weigh heavily as taxpayers, voters and legislators ponder the policy decisions made by the legislature. But the role of this court is not to judge the wisdom of those decisions or grade the efficacy of the provisions enacted. None of these arguments result in a determination that the Act is unconstitutionally defective. All issues raised by a Plaintiff but not mentioned in this Memorandum Decision and Order have been considered and determined not to render the Act unconstitutional.

XXII. CONCLUSION

Hence, all portions of the Act are constitutional except those relating to low enrollment weighting and the 1994-1995 mill levy. The 1994-1995 mill levy is deleted from the Act. The low enrollment weighting provisions are so integral to the Act that the provisions cannot be severed. The holding that the low enrollment weighting is unconstitutional is suspended until July 1, 1994.

IT IS SO ORDERED.

/s/ Marla J. Luckert
Marla J. Luckert, District Judge

COPIES TO:

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APPENDIX A

I. **SOUTHWESTERN PLAINTIFFS.** The Plaintiffs in case number 92 CV 1202 have been referred to collectively as the "Southwestern Plaintiffs" throughout these proceedings, the name deriving from the geographic location of the Plaintiffs who reside in the southwest corner of the state. There are a total of forty-seven plaintiffs named in the petition in case number 92 CV 1202, consisting of nine (9) school districts, eighteen (18) citizens and taxpayers from each of the respective districts, and twenty (20) students from each of the respective districts.

A. The nine school districts are:

1. Unified School District 217 which is officed in Rolla, Morton County, Kansas. As of September 20, 1992, there were 207.3 full time equivalent students enrolled in the district. USD 217 covers 252 square miles which is a ratio of 0.8 students per mile, one of the lowest student densities in the state. There are two attendance centers in the district, one of which is a high school.

2. Unified School District 215 which is officed in Lakin, Kearny County, Kansas. As of September 20, 1992, there were 703.2 full time equivalent students enrolled in the district. USD 215 covers 645 square miles which is a ratio of 1.1 students per mile. There are three attendance centers in the district, one of which is a high school.

3. Unified School District 210 which is officed in Hugoton, Stevens County, Kansas. As of September 20, 1992, there were 1,026.5 full time equivalent students enrolled in the district. USD 210 covers 575 square miles

which is a ratio of 1.8 students per mile. There are three attendance centers in the district, one of which is a high school.

4. Unified School District 507 which is officed in Satanta, Haskell County, Kansas. As of September 20, 1992, there were 359.0 full time equivalent students enrolled in the district. USD 507 covers 250 square miles which is a ratio of 1.4 students per mile. There are two attendance centers in the district, one of which is a high school.

5. Unified School District 363 which is officed in Holcomb, Finney County, Kansas. As of September 20, 1992, there were 709.0 full time equivalent students enrolled in the district. USD 363 covers 231 square miles which is a ratio of 3.1 students per mile. There are two attendance centers in the district, one of which is a high school.

6. Unified School District 452 which is officed in Johnson, Stanton County, Kansas. As of September 20, 1992, there were 521.5 full time equivalent students enrolled in the district. USD 452 covers 690 square miles which is a ratio of 0.8 students per square mile, one of the smallest student density ratios in the state. There are five attendance centers in the district, one of which is a high school.

7. Unified School District 218 which is officed in Elkhart, Morton County, Kansas. As of September 20, 1992, there were 548.9 full time equivalent students enrolled in the district. USD 218 covers 376 square miles which is a ratio of 1.5 students per square mile. There are

three attendance centers in the district, one of which is a high school.

8. Unified School District 214 which is officed in Ulysses, Grant County, Kansas. As of September 20, 1992, there were 1,683.0 full time equivalent students enrolled in the district. USD 214 covers 517 square miles which is a ratio of 3.3 students per square mile. There are five attendance centers in the district, one of which is a high school.

9. Unified School District 209 which is officed in Moscow, and situated in Stevens and Grant County, Kansas. As of September 20, 1992, there were 168.5 full time equivalent students enrolled in the district. USD 209 covers 223 square miles which is a ratio of 0.8 students per square mile, one of the lowest density ratios in the state. There are two attendance centers in the district, one of which is a high school.

B. Kent D. Bressler and Diana L. Bressler are residents of Rolla, Morton County, Kansas. Thomas W. Wright IV and Connie L. Wright are residents of Lakin, Kearny County, Kansas. Alan Sullivan and Robin Sullivan are residents of Hugoton, Stevens County, Kansas. Randolph A. Froelich and Lennet R. Froelich are residents of Satanta, Haskell County, Kansas. Harold D. Knoll and Mary Louaine Knoll are residents of Holcomb City, Finney County, Kansas. Gary E. Kendrick and Brenda Jeann Kendrick are residents of Johnson, Stanton County, Kansas. Tim D. Watson and Luann Watson are residents of Elkhart, Morton County, Kansas. Michael L. Long and Janet S. Long are residents of Ulysses, Grant County,

Kansas. Dell A. Collison and Angela K. Collison are residents of Moscow City, Stevens County, Kansas. Each of these individuals is a taxpayer in his or her respective county and in the State of Kansas.

C. Dustin Beau Bressler and Deeana L. Bressler are minors who are currently students in Unified School District 217. E. Andra Wright, Jennifer A. Wright and Thomas W. Wright V are minors who are currently students in Unified School District 215. Abel Ian Sullivan and Hannah Rose Sullivan are minors who are currently students in Unified School District 210. Nicholas Michael Long and Melissa Michelle Long are minors who are currently students in Unified School District 214. Sarah Ranay Froelich, Kathryn Elizabeth Froelich and Rebecca Ann Froelich are minors who are currently students in Unified School District 507. Benjamin Lee Knoll, Matthew James Knoll, Jonathan Roy Knoll and Nicole Renee Knoll are minors who are currently students in Unified School District 363. Clint E. Kendrick is a minor who is currently a student in Unified School District 452. Robbie Michelle Watson and Timothy Rees Watson are minors who are currently students in Unified School District 218. Carter D. Collison is a minor who is currently a student in Unified School District 209.

II. **BLUE VALLEY PLAINTIFFS.** The Plaintiffs in case number 92 CV 1099 have been referred to collectively as the "Blue Valley Plaintiffs". The Plaintiffs consist of one (1) school district, two (2) taxpayers and three (3) students.

The school district is Unified School District 229 located in Johnson and Miami Counties. The district is

one of two districts in Kansas known as the Blue Valley District. As of September 20, 1992, there were 10,584.4 full time equivalent students. The district covers 87 square miles which means the ratio of pupils to square miles is 121.7. There are nineteen (19) attendance centers, including two (2) high schools.

Karl D. Pfuetze, M.D., and Mary Jane Pfuetze are residents of Johnson County, Kansas and are taxpayers in that county and in the state. Their minor children, who attend the Blue Valley School District and are plaintiffs, are Stephan, Rebecca and Robert.

III. **BURLINGTON PLAINTIFFS.** The Plaintiffs in case number 92 CV 1175 have been referred to throughout these proceedings as the "Burlington Plaintiffs". These Plaintiffs consist of one (1) school district, seven (7) members of the district's school board and four (4) students of the district. The school district is Unified School District 244 which is located in Coffey County, Kansas. As of September 20, 1992, the district had a full time enrollment of 951.1 students. The district covers 147 square miles making the pupil per square mile ratio 6.5. The district has three (3) attendance centers, one (1) of which is a high school.

The board members who are plaintiffs are Ron Wollum, Pam Hoyt, Judy Stukey, Richard Newkirk, Richard Allen, Jim Dale, and Stan Devena. The students named as plaintiffs are Matt Dearle Marrs, Mark Edward Marrs, Wendy Jo Marrs, and Danny Joseph Marrs.

IV. **NEWTON PLAINTIFFS.** The Plaintiffs in case number 90 CV 2406 have been referred to throughout

these proceedings as the "Newton Plaintiffs". The Plaintiffs consist of six (6) school districts, twelve (12) students from the various districts, and fourteen (14) taxpayers.

A. The six (6) school districts are:

1. Unified School District 373 which is located in Newton, Harvey County, Kansas. As of September 20, 1992, the Newton school district had an enrollment of 3,410.1 full time equivalent students. The district covered 133.5 square miles, making the student per square mile ratio 25.5. There are eleven (11) attendance centers in the district, including one (1) high school.

2. Unified School District 489 which is located in Hays, Ellis County, Kansas. As of September 20, 1992, the Hays School District had an enrollment of 3,430.5 full time equivalent students. The district covered 380.2 square miles, making the student per square mile ratio 9.0. There are twelve (12) attendance centers in the district, including one (1) high school.

3. Unified School District 443 which is located in Dodge City, Ford County, Kansas. As of September 20, 1992, the Dodge City School District had an enrollment of 4,231.1 full time equivalent students. The district covered 425.7 square miles, making the student per square mile ratio 10.1. There are ten (10) attendance centers in the district, including one (1) high school.

4. Unified School District 465 which is located in Winfield, Cowley County, Kansas. As of September 20, 1992, the Winfield School District had an enrollment of 2,497.2 full time equivalent students. The district covered 262 square miles, making the student per square mile

ratio 9.5. There are ten (10) attendance centers in the district, including one (1) high school.

5. Unified School District 250 which is located in Pittsburg, Crawford County, Kansas. As of September 20, 1992, the Pittsburg School District had an enrollment of 2,903.2 full time equivalent students. The district covered 43 square miles, making the student per square mile ratio 67.5. There are seven (7) attendance centers in the district, including one (1) high school.

6. Unified School District 453 which is located in Leavenworth, Leavenworth County, Kansas. As of September 20, 1992, the Leavenworth School District had an enrollment of 4,191.0 full time equivalent students. The district covered 17 square miles, making the student per square mile ratio 246.5, one of the highest in the state. There are eleven (11) attendance centers in the district, including one (1) high school.

B. The Plaintiff students and the school districts which they attend are:

Casey M. Thull – Newton USD 373
John Thomas Thull – Newton USD 373
Michelle Ann Horst – Newton USD 373
Russell Toepfer – Hays USD 489
Matthew Spicer – Hays USD 489
Katie Malone – Dodge City USD 443
Brianne Mason – Dodge City USD 443
Eric Frederick Haag – Leavenworth USD 453
Michael Richard Haag – Leavenworth USD 453
Sarah Lewis – Winfield USD 465
John Kaufman – Winfield USD 465
Elizabeth Scorse – Pittsburg USD 250
Carly Fincher – Pittsburg USD 250

C. The Plaintiff taxpayers and the counties of their residences are:

Alden Allbaugh – Harvey County
Bill Wenger – Harvey County
Gene F. Anderson – Ellis County
Leota L. Anderson – Ellis County
Edward E. Bouker – Ellis County
Angela M. Bouker – Ellis County
Irene L. Thompson – Ford County
Marie D. Strobel – Ford County
Ruth Thompson – Cowley County
Duane Chrisler – Cowley County
Jack McGlothlin – Crawford County
Calvin Neptune – Crawford County
Donald Richard Haag – Leavenworth County
Barbara Louise Haag – Leavenworth County

IN THE DISTRICT COURT OF
SHAWNEE COUNTY, KANSAS
DIVISION THREE

NEWTON U.S.D. NO. 373, et al.

Plaintiffs,

vs. Case No. 90 CV 2406

STATE OF KANSAS, et al.,
Defendants.

UNIFIED SCHOOL DISTRICT
NO. 229, et al.,

Plaintiffs,

vs. Case No. 92 CV 1099

STATE OF KANSAS, et al.,

Defendants.

UNIFIED SCHOOL DISTRICT
NO. 244 COFFEY COUNTY,
et al.,

vs. Case No. 92 CV 1175

STATE OF KANSAS, et al.,

Defendants.

UNIFIED SCHOOL DISTRICT
NO. 217, ROLLA, KANSAS,
et al.,

Plaintiffs,

vs. Case No. 92 CV 1202

STATE OF KANSAS, et al.,

Defendants.

MEMORANDUM DECISION AND ORDER

(Filed May 28, 1993)

Unified School Districts No. 244 (Coffey County), 209 (Moscow), 210 (Hugoton), 214 (Ulysses), 215 (Lakin), 217 (Rolla), 218 (Elkhart), 363 (Holcomb), 452 (Stanton County) and 507 (Satanta) and related Plaintiffs seek a temporary injunction or a protective order restraining the State of Kansas from collecting the excess ad valorem tax revenues generated under K.S.A. 72-6431.

The excess ad valorem taxes at issue are a part of the school finance mechanism legislated in the School District Finance and Quality Performance Act, 1992 Kan. Sess. L. Ch. 280, codified at K.S.A. 72-6405 et seq., as amended by H.B. 2505, 17 Kan. Reg. 694 (April 29, 1993).

Under the Act, the school board of each school district in the state of Kansas must levy an ad valorem tax upon the taxable tangible property of the district at the rate of 32 mills for the 1992-93 school year, 33 mills for the 1993-94 school year, and 35 mills for the 1994-95 school year and succeeding years. K.S.A. 72-6431(a). Except for portions of the tax which pay for principal and interest on redevelopment project bonds issued pursuant to K.S.A. 12-1774, the proceeds from the tax are deposited in the general fund of the district. K.S.A. 72-5431(c) [sic]. On June 1 of each year, the district remits to the Kansas State Treasurer those revenues from the district's "local effort" which exceed the district's "state financial aid". The funds from the "local effort" are comprised primarily of the ad valorem tax revenues (K.S.A. 72-6431), but may also be comprised of motor vehicle tax receipts; mineral production tax receipts; industrial revenue bond and port

authority bond in lieu of tax payments; federal PL 874 Impact Aid (in accord with federal law and regulations); unexpended and unencumbered balances remaining in the district's general fund; unexpended and unencumbered balances remaining in a district's "program weighted" funds, i.e., transportation, bilingual and vocational education funds (except for the vocational fund of a district which operates a vocational school); and remaining proceeds of the former general fund and transportation tax levies prior to their repeal in 1992. K.S.A. 72-6410.

The district's "state financial aid" is determined by a formula of the legislatively-designated base state aid per pupil multiplied by the district's weighted enrollment. At the present time, the base state aid per pupil is $3,600.00. The weighted enrollment is based upon the district's full-time enrollment adjusted by six weighting factors which account for specified student populations to whom higher costs are associated: bilingual students, vocational education students, at-risk students, students in low enrollment districts, students in new facilities and students who are transported. The total state financial aid to be distributed to the school districts of Kansas is estimated to be $984,895,000.

The base state aid per pupil provision is the cornerstone of the finance provisions of the 1992 Act. The concept is one of equal minimum funding for all students regardless of whether the student resides in a district with a large ad valorem tax base or a sparse tax base. However, school districts may increase the funding level by adopting a local option budget of up to twenty-five (25) percent. Of the ten moving parties, two have not

utilized a local option budget. One, Moscow U.S.D. 209, utilized the maximum allowable local option budget.

The "recapture" funds, as the June 1 payments of the amounts of local effort which exceed the state financial aid are often labelled, are remitted to the State and deposited in the State School District Finance Fund. The monies in this fund, which can be utilized solely for the purpose of school finance, are remitted to those districts which do not have sufficient local effort to fully fund the district's state financial aid. The difference between the district's state financial aid and the district's local effort is the amount of "general state aid" to which the district is entitled. K.S.A. 72-6416. Districts receive monthly general state aid payments in an amount the State Board of Education determines necessary to maintain operations during the month. In June, each district is paid the total amount of the entitled general state aid less the amounts distributed from July to May. K.S.A. 72-6417. The recapture funds paid in June contribute to the June payment of general state aid.

For fiscal year 1992-93, ten school districts had local effort funds which exceeded that district's state financial aid entitlement. Eight of those districts are moving parties. U.S.D. 424, Mullinville, and U.S.D. 321, Kaw Valley, are recapture districts, but are not parties to these suits. The Kansas State Board of Education estimates that the total recapture amount from [sic] is $14,140,286. Eight of the moving parties. (Elkhart and Stanton County are moving parties but are not recapture districts) would remit $12,646,589 of this amount. District 244, Coffey County, the first party to seek a temporary injunction, would pay

$5,855,545 of the total. The Coffey County school district's remittance constitutes to 0.00584% of the total amount of state aid payable to Kansas school districts.

In the 1993 legislative session, the legislature amended the statute to require an adjustment to the base state aid per pupil when appropriations in any fiscal year for general state aid were not sufficient to pay a district's entitlement. K.S.A. 72-6410(d) (12 Kan. Reg. 696-97 (1993)). Under this provision, the loss of the recapture amounts would reduce the base state aid per pupil to approximately $3,565.00 for all school districts allowed to budget at the $3,600.00 level. Approximately 100 districts were not allowed to budget $3,600.00 base state aid per pupil because of a cap which applied during the 1992-93 school year, a transition year between the prior and the present school finance acts. The cap limited a district's budget increase to 10 percent over the preceding year's budget unless the district experienced enrollment growth. The reduction, therefore, impacts the remaining approximately 213 districts, including the moving parties.

While each of the 213 districts loses the same amount of base per pupil aid, the dollar amount lost varies district to district because of the differences in student population. In no district would the loss of funds exceed one percent of the district's budget for the year. Noting the losses which would be incurred by the six Plaintiff school districts in case number 92 CV 2406 is illustrative of the variance:

Winfield:	Loss of $91,518
Pittsburg:	No Loss
Hays:	Loss of $124,803
Dodge City:	Loss of $153,268

Newton:	Loss of $124,103
Leavenworth:	Loss of $109,600

At the May 25, 1993 evidentiary hearing, representatives of three school districts testified regarding the anticipated loss and the impact. Much of the adverse impact results because of the interplay between the provisions of the Act and the cash basis law. Under these statutes a district's spending must be encumbered by June 30, but if a district does not have cash it cannot encumber funds. Hence, the spending of the districts for fiscal year 1992-93, whether for contract amounts due and owing or for new obligations necessarily incurred during the summer months, is impacted by the amount of recapture funds available to pay the districts remaining general state aid due to be paid to the districts in June.

U.S.D. 259, Wichita, would lose $1.68 million if the recapture funds are not collected. An assistant superintendent for the district testified that the adverse impact of this loss would be "significant". According to the testimony, summer spending and spending decisions were critical to the district's operation since staffing decisions would be made and school supplies would be ordered. If the recapture monies are lost, Wichita could face a cash shortage this summer if a disproportionate number of teachers exercise their right to receive summer salaries in lump sum. Even if the cash flow problem does not develop, the shifting of expenditures from this fiscal year to the next would result in budget problems for next year which could cause the district to not employ teachers who would otherwise be hired.

Olathe U.S.D. 233 would lose up to $540,000. This loss would impact the budget for the 1993-94 school year because anticipated carryovers from the 1992-93 year would not be available. Olathe could also experience a cash flow problem in June if a disproportionate number of teachers requested their summer payroll in lump sum.

The loss of approximately $504,000 would result in Topeka U.S.D. 501 being unable to have approximately 100 teachers write curriculum in June. The district would also be forced to dispense with having another 100 teachers write assessments for outcome based educational goals, an essential part of the quality performance accreditation mandated by the Act. The district would not have the funds to pay the hourly wages due the teachers for these addendum services which are not included in the teacher contracts. Programmatic commitments of the district for June would have to be altered or eliminated. The district would also have to cut technology expenditures. As with the other districts, the potential exists for a cash flow problem if a disproportionate number of teachers requested lump sum payments. These problems, according to the testimony of an associate superintendent for the district, would have "substantial adverse" impact on the district.

Dale Dennis, Deputy Commissioner of Education for the Kansas Board of Education, testified that, while he could not provide additional specific examples, it was his opinion that similar problems would be experienced by many of the 213 districts impacted by the loss of the recapture funds. The loss would impact payment of teacher salaries for June and July, purchasing of supplies

for the 1993-94 school year and arranging for bus transportation.

The eight districts which are moving parties and which are recapture districts would not receive any of the recapture monies if the motion for injunctive relief is denied. However, according to Dr. Larry Clark, Superintendent of Coffey County U.S.D. 244, if the injunction issues, the recapture funds generated in his district would be utilized in the 1993-94 budget or could be remitted to the taxpayers.

In the recapture districts, some taxpayers paid taxes under protest. If the Act is unconstitutional and, therefore, the tax protest is successful, the district would have to refund the taxes paid. A refund due because of a successful protest is paid out of the budget for the fiscal year in which the protest is resolved. Such payments would adversely impact a district's budget in that year. If the district qualified for supplemental aid because the local effort was not sufficient, state aid would contribute the payment of tax refunds.

It is against this factual and statutory framework that the motion for injunctive relief must be evaluated. In doing so, it is important to note that a temporary injunction, deriving from equity, is intended only to preserve the status quo until a final determination is made. *Comanche County Hospital v. Blue Cross of Kansas, Inc.*, 228 Kan. 364, 366, 623 P.2d 950 (1980). The status quo is usually defined as the last uncontested status which preceded the controversy. *E.g., National Association of Letter Carriers v. Sombretto*, 449 F.2d 915, 921 (2d Cir. 1971). In this case, the status before this lawsuit was one of full

implementation and reliance upon the school district finance and quality performance act passed by the 1992 legislature. Taxpayers paid taxes due under the Act. School districts, including the moving parties, developed budgets, executed contracts, levied ad valorem taxes and received monies based on the provisions of the Act. School districts made expenditures, including some which might not have been made but for the expected June distribution of general state aid.

An injunction at this point would disrupt the full utilization of the Act and the budgetary and expenditure process which has occurred and which, under the operation of the Act and the cash basis statute, must be completed by June 30, the end of the fiscal year. Traditionally, when an injunction is sought which would disturb, rather then preserve, the status quo, courts have imposed a much higher burden upon the movant. However, it is not necessary to analyze whether to consider the current motions under a higher burden because the moving parties have not met the minimum burden for allowing a temporary injunction.

In *Wichita Wire, Inc. v. Lenox*, 11 Kan. App. 2d 459, 726 P.2d 287 (1986), the Kansas Court of Appeals defined the minimum burden by enumerating four prerequisites which the moving party seeking a temporary or preliminary injunction must meet. The movants must show:

> (1) substantial likelihood that the movant will eventually prevail on the merits; (2) a showing that the movant will suffer irreparable injury unless the injunction issues; (3) proof that the threatened injury to the movant outweighs whatever damage the proposed injunction may

> cause the opposing parties; and (4) a showing that the injunction, if issued, would not be adverse to the public interest. *Lundgrin v. Claytor*, 619 F.2d 61, 63 (10th Cir. 1980); *Uarco Inc. v. Eastland*, 584 F. Supp. 1259, 1261 (D. Kan. 1984).

11 Kan. App. 2d at 462. Failure to meet any of the four tests is fatal to the moving party's request. *Kenai Oil & Gas Inc. v. Department of Interior*, 671 F.2d 383, 385 (10th Cir. 1982).

The requirement of irreparable harm has been identified as " '[p]erhaps the single most important prerequisite for the issuance of a preliminary injunction . . . ' " since ' "[o]nly when the threatened harm would impair the court's ability to grant an effective remedy is there really a need for preliminary relief' ". *Lee v. McManus*, 543 F. Supp. 386, 391 (D. Kan. 1982), *quoting* C. Wright and Miller, *Federal Practice and Procedure: Civil* § 2948, at 431, 434 (1973). Hence, the irreparable harm prerequisite warrants the initial examination.

Citing *Mobile Oil Corp. v. McHenry*, 200 Kan. 211, 436 P.2d 982 (1968), the moving parties argue that those districts with the recapture funds will be irreparably harmed once the funds are remitted to the State because the funds would then be unavailable to the district. The loss would adversely impact the budgets of these school districts if the Act is ruled unconstitutional because the districts would have to repay to taxpayers those taxes paid under a protest. Those repayments would come from future years budgets. However, the amount of the recapture funds and the taxes paid under protest can be quantified. Hence, the monetary damage to the districts can be calculated and a full, complete and adequate remedy can be

carved in the final judgment of this case. As such an injunction is not appropriate. *Wichita Wire v. Lenox*, 11 Kan. App. 2d at 465.

The moving parties also argue irreparable harm may result because the districts may be sued in an action pursuant to 42 U.S.C. § 1983 and the school board members may be sued for violation of their oaths. However, in order for the moving parties to met [sic] the burden "[t]here must be a probable right and a probable danger" established. *Wichita Wire v. Lenox*, 11 Kan. App. 2d at 462. The moving parties have not made an evidentiary showing that there is a probable danger of the districts suffering this injury. Further, the moving parties offer no explanation as to how the threat of these actions is lessened by the injunction. The districts have complied with the legislative mandate of K.S.A. 72-6431(a) to levy the ad valorem tax; the taxes have been collected. The harm, if any, to those who would bring the suits against the district has occurred. Injunctions cannot be utilized to remedy past injury. 11 Kan. App. 2d at 464. Finally, the moving parties have offered no explanation as to why the harm to the district from these suits could not be compensated through a remedy at law fashioned at the conclusion of this action.

Hence, the moving parties have failed to meet the burden of establishing the prerequisite of irreparable harm.

Further, the Court finds that the injunction, if issued, would be adverse to the public interest. The position of the moving parties is that the loss of less than one percent

of the total school finance budget is insignificant. However, the evidence presented through the testimony of the deputy commissioner of education for the Kansas State Board of Education, Dale Dennis, and from representatives of three school districts revealed that the impact would be adverse to the education of Kansas school children. Even though proportionately the loss of funds would not be large, it would have a disproportionate impact because of the timing of the motion. The short amount of time remaining in the fiscal year leaves the districts impacted by the loss of the funds with no room for adjustments or time to be flexible. Had the motion been heard earlier in the year, the school districts might have been able to adjust for the shortfall. Now, the school districts have made commitments and budgeted expenditures which depend upon the availability of the funds.

The moving parties suggest that a six week delay, until the final resolution of this case, would not create an adverse impact. Yet, the evidence was that, because of the operation of the cash basis law, even a delay would have significant adverse impact. For example, Topeka's U.S.D. 501 would be forced to cancel the work planned for June involving over 200 teachers. During this period the teachers would have been working on curriculum writing and quality performance accreditation processes. This work could not be delayed but would have to be cancelled because the district would not have sufficient supervisory personnel to oversee all of the work if lumped into a short period of time. Additionally, each of the district representatives who testified at the hearing

indicated that there could be cash flow problems in meeting the lump-sum salary requests of the teaching personnel, a right which teachers have under Kansas law. Further, because the districts are in a planning stage, the uncertainty of the availability of the funds would be troublesome, according to the testimony received in court.

In addition to the adverse impact of the delays, the moving parties suggestion that the funds be held until the termination of this proceeding involves many legal complications. To allow for the suspension of the utilization of these funds without penalizing the 213 school districts receiving state general aid, the Court would have to suspend the operation of the cash basis law and, in effect, rewrite the school district finance and quality performance act or at least that portion amended in 1993 relating to the adjustment of base state aid per pupil. The carving of such a broad remedy would be improper. *Wyoming v. Colorado*, 286 U.S. 494, 508, 76 L. Ed. 1245, 52 S. Ct. 621 (1932).

The moving parties also suggest that no fund warrants could be utilized to alleviate adverse impact. While a theoretical possibility, no fund warrants for all of the districts adversely impacted or even for those most substantially impacted is not a practical solution. Even assuming the process of issuance of the warrants could be initiated immediately, a logistical nightmare could arise as some or even a small percentage of the approximately two hundred districts attempted to deal with the loss of funds. *See* K.S.A. 79-2938 et seq. for an explanation of the procedure which would have to be followed. Further, the evidence before the Court was that some districts would

not qualify for no fund warrants. Hence, the adverse public impact would be felt.

In summary, the adverse public impact was identified by the deputy commissioner of education when he testified that the injunction would result in dollars being taken out of programs for Kansas school children. This harm, which is adverse to the public interest, far outweighs the potential loss to the recapture districts who will be transmitting the funds, especially since the recapture districts, loss can be compensated.

Because the moving parties have failed to meet the prerequisites of establishing an irreparable injury or showing that the injunction would not have an adverse public impact, it is not necessary to consider whether the burden of establishing the other prerequisites has been met. The motions of Coffey County and the Southwest Plaintiffs for injunctive relief or protective order are denied.

IT IS SO ORDERED.

/s/ Marla J. Luckert
Marla J. Luckert,
District Judge

COPIES TO:

John Vratil
Thomas A. Hamill
Robert J. Perry
Bryan K. Joy
Daniel Bloom
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Article 6. – EDUCATION

§ 1. Schools and related institutions and activities. The legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools, educational institutions and related activities which may be organized and changed in such manner as may be provided by law.

§ 2. State board of education and state board of regents. (a) The legislature shall provide for a state board of education which shall have general supervision of public schools, educational institutions and all the educational interests of the state, except educational functions delegated by law to the state board of regents. The state board of education shall perform such other duties as may be provided by law.

(b) The legislature shall provide for a state board of regents and for its control and supervision of public institutions of higher education. Public institutions of higher education shall include universities and colleges granting baccalaureate or postbaccalaureate degrees and such other institutions and educational interests as may be provided by law. The state board of regents shall perform such other duties as may be prescribed by law.

(c) Any municipal university shall be operated, supervised and controlled as provided by law.

§ 3. Members of state board of education and state board of regents. (a) There shall be ten members of the state board of education with overlapping terms as the legislature may prescribe. The legislature shall make provision for ten member districts, each comprised of four

contiguous senatorial districts. The electors of each member district shall elect one person residing in the district as a member of the board. The legislature shall prescribe the manner in which vacancies occurring on the board shall be filled.

(b) The state board of regents shall have nine members with overlapping terms as the legislature may prescribe. Members shall be appointed by the governor, subject to confirmation by the senate. One member shall be appointed from each congressional district with the remaining members appointed at large, however, no two members shall reside in the same county at the time of their appointment. Vacancies occurring on the board shall be filled by appointment by the governor as provided by law.

(c) Subsequent redistricting shall not disqualify any member of either board from service for the remainder of his term. Any member of either board may be removed from office for cause as may be provided by law.

§ 4. Commissioner of education. The state board of education shall appoint a commissioner of education who shall serve at the pleasure of the board as its executive officer.

§ 5. Local public schools. Local public schools under the general supervision of the state board of education shall be maintained, developed and operated by locally elected boards. When authorized by law, such boards may make and carry out agreements for co-operative operation and administration of educational programs under the general supervision of the state board of

education, but such agreements shall be subject to limitation, change or termination by the legislature.

§ 6. Finance. (a) The legislature may levy a permanent tax for the use and benefit of state institutions of higher education and apportion among and appropriate the same to the several institutions, which levy, apportionment and appropriation shall continue until changed by statute. Further appropriation and other provision for finance of institutions of higher education may be made by the legislature.

(b) The legislature shall make suitable provision for finance of the educational interests of the state. No tuition shall be charged for attendance at any public school to pupils required by law to attend such school, except such fees or supplemental charges as may be authorized by law. The legislature may authorize the state board of regents to establish tuition, fees and charges at institutions under its supervision.

(c) No religious sect or sects shall control any part of the public educational funds.

§ 7. Savings clause. (a) All laws in force at the time of the adoption of this amendment and consistent therewith shall remain in full force and effect until amended or repealed by the legislature. All laws inconsistent with this amendment, unless sooner repealed or amended to conform with this amendment, shall remain in full force and effect until July 1, 1969.

(b) Notwithstanding any other provision of the constitution to the contrary, no state superintendent of public

instruction or county superintendent of public instruction shall be elected after January 1, 1967.

(c) The state perpetual school fund or any part thereof may be managed and invested as provided by law or all or any part thereof may be appropriated, both as to principal and income, to the support of the public schools supervised by the state board of education.

Article 64. – SCHOOL DISTRICT FINANCE AND QUALITY PERFORMANCE

72-6405. Citation of act. (a) K.S.A. 72-6405 through 72-6440, and amendments thereto, shall be known and may be cited as the school district finance and quality performance act.

(b) The provisions of this section shall take effect and be in force from and after July 1, 1992.

72-6406. Definitions; district; board; state board. (a) "District" means a school district organized under the laws of this state which is maintaining public school for a school term in accordance with the provisions of K.S.A. 72-1106, and amendments thereto.

(b) "Board" means the board of education of a school district.

(c) "State board" means the state board of education.

(d) The provisions of this section shall take effect and be in force from and after July 1, 1992.

72-6407. Definitions; pupil; enrollment; weightings. (a) "Pupil" means any person who is regularly enrolled in a district and attending kindergarten or any of the grades one through 12 maintained by the district or who is regularly enrolled in a district and attending kindergarten or any of the grades one through 12 in another district in accordance with an agreement entered into under authority of K.S.A. 72-8233, and amendments thereto, or who is regularly enrolled in a district and attending special education services provided for preschool-aged exceptional children by the district. Except as otherwise provided in this subsection, a pupil in attendance full time shall be counted as one pupil. A pupil in attendance part time shall be counted as that proportion of one pupil (to the nearest $^1/_{10}$) that the pupil's attendance bears to full-time attendance. A pupil attending kindergarten shall be counted as $^1/_2$ pupil. A pupil enrolled in and attending an institution of postsecondary education which is authorized under the laws of this state to award academic degrees shall be counted as one pupil if the pupil's postsecondary education enrollment and attendance together with the pupil's attendance in either of the grades 11 or 12 is at least $^5/_6$ time, otherwise the pupil shall be counted as that proportion of one pupil (to the nearest $^1/_{10}$) that the total time of the pupil's postsecondary education attendance and attendance in grade 11 or 12, as applicable, bears to full-time attendance. A pupil enrolled in and attending an area vocational school, area vocational-technical school or approved vocational education program shall be counted as one pupil if the pupil's vocational education enrollment and attendance together with the pupil's attendance in any of grades nine

through 12 is at least 5/6 time, otherwise the pupil shall be counted as that proportion of one pupil (to the nearest 1/10) that the total time of the pupil's vocational education attendance and attendance in any of grades nine through 12 bears to full-time attendance. A pupil enrolled in a district and attending special education services, except special education services for preschool-aged exceptional children, provided for by the district shall be counted as one pupil. A pupil enrolled in a district and attending special education services for preschool-aged exceptional children provided for by the district shall be counted as 1/2 pupil. A pupil in the custody of the secretary of social and rehabilitation services and enrolled in unified school district No. 259, Sedgwick county, Kansas, but housed, maintained, and receiving educational services at the Judge James V. Riddel Boys Ranch, shall be counted as two pupils. A pupil residing at the Flint Hills job corps center shall not be counted. A pupil confined in the receiving educational services provided for by a district at a juvenile detention facility shall not be counted. A pupil enrolled in a district but housed, maintained, and receiving educational services at a state institution shall not be counted.

(b) "Preschool-aged exceptional children" means exceptional children, except gifted children, who have attained the age of three years but are under the age of eligibility for attendance at kindergarten.

(c) "At-risk pupils" means pupils who are eligible for free meals under the national school lunch act and for whom a district maintains an approved at-risk pupil assistance plan.

(d) "Enrollment" means, for districts scheduling the school days or school hours of the school term on a trimestral or quarterly basis, the number of pupils regularly enrolled in the district on September 20 plus the number of pupils regularly enrolled in the district on February 20 less the number of pupils regularly enrolled on February 20 who were counted in the enrollment of the district of September 20; and for districts not hereinbefore specified, the number of pupils regularly enrolled in the district on September 20. Notwithstanding the foregoing, if enrollment in a district in any school year has decreased from enrollment in the preceding school year, enrollment of the district in the current school year may be computed by adding one-half the number of pupils by which enrollment in the current school year has decreased from enrollment in the preceding school year to enrollment in the current school year, except that such computation shall not be applied to decreases in enrollment in the current school year that are in excess of 4% of enrollment in the preceding school year.

(e) "Adjusted enrollment" means enrollment adjusted by adding at-risk pupil weighting, program weighting, low enrollment weighting, if any, school facilities weighting, if any, and transportation weighting to enrollment.

(f) "At-risk pupil weighting" means an addend component assigned to enrollment of districts on the basis of enrollment of at-risk pupils.

(g) "Program weighting" means an addend component assigned to enrollment of districts on the basis of

pupil attendance in educational programs which differ in cost from regular educational programs.

(h) "Low enrollment weighting" means an addend component assigned to enrollment of districts having under 1,900 enrollment on the basis of costs attributable to maintenance of educational programs by such districts in comparison with costs attributable to maintenance of educational programs by districts having 1,900 and over enrollment.

(i) "School facilities weighting" means an addend component assigned to enrollment of districts on the basis of costs attributable to commencing operation of new school facilities. School facilities weighting may be assigned to enrollment of a district only if the district has adopted a local option budget and budgeted therein the total amount authorized for the school year. School facilities weighting may be assigned to enrollment of the district only in the school year in which operation of a new school facility is commenced and in the next succeeding school year.

(j) "Transportation weighting" means an addend component assigned to enrollment of districts on the basis of costs attributable to the provision or furnishing of transportation.

72-6408. Definitions; school year. (a) "School year" means the twelve month period ending June 30.

(b) "Current school year" means the school year during which general state aid is determined by the state board under K.S.A. 72-6416, and amendments thereto.

(c) "Preceding school year" means the school year immediately before the current school year.

(d) "September 20" has its usual meaning, except that in any year in which September 20 is not a day on which school is maintained, it shall mean the first day after September 20 on which school is maintained.

(e) "February 20" has its usual meaning, except that in any year in which February 20 is not a day on which school is maintained, it shall mean the first day after February 20 on which school is maintained.

(f) The provisions of this section shall take effect and be in force from and after July 1, 1992.

72-6409. Definitions; funds; operating expenses; budgets. (a) "General fund" means the fund of a district from which operating expenses are paid and in which is deposited the proceeds from the tax levied under K.S.A. 72-6431, and amendments thereto, all amounts of general state aid under this act, payments under K.S.A. 72-7105a, and amendments thereto, payments of federal funds made available under the provisions of title I of public law 874, except amounts received for assistance in cases of major disaster and amounts received under the low-rent housing program, and such other moneys as are provided by law.

(b) "Operating expenses" means the total expenditures and lawful transfers from the general fund of a district during a school year for all purposes, except expenditures for the purposes specified in K.S.A. 72-6430, and amendments thereto.

(c) "General fund budget" means the amount budgeted for operating expenses in the general fund of a district.

(d) "Budget per pupil" means the general fund budget of a district divided by the enrollment of the district.

(e) "Program weighted fund" means and includes the following funds of a district: Transportation fund, vocational education fund, and bilingual education fund.

(f) "Categorical fund" means and includes the following funds of a district: Special education fund, food service fund, driver training fund, adult education fund, adult supplementary education fund, area vocational school fund, inservice educational fund, parent education program fund, summer program fund, extraordinary school program fund, and educational excellence grant program fund.

72-6410. Definitions; state aid; local effort; federal impact aid. (a) "State financial aid" means, for the 1992-93 school year, formula state financial aid or transitional state financial aid, whichever is the lesser amount; and for the 1993-94 school year and each school year thereafter, an amount equal to the product obtained by multiplying base state aid per pupil by the adjusted enrollment of a district.

(b) (1) "Formula state financial aid" means an amount equal to the product obtained by multiplying base state aid per pupil by the adjusted enrollment of a district.

(2) The provisions of this subsection shall expire on June 30, 1993.

(c) (1) "Transitional state financial aid" means an amount computed for a district by the state board as follows: (A) Determine the sum of the amount of the legally adopted budget of operating expenses of the district in the 1991-92 school year and the amount of the state transportation aid, bilingual education aid and vocational education aid received by the district in the 1991-92 school year and the proceeds from the tax levied under K.S.A. 72-7072 in the 1991-92 school year if such tax was levied; (B) determine enrollment of the district in the 1991-92 school year; (C) determine enrollment of the district in the 1992-93 school year; (D) if enrollment in the 1992-93 school year is greater than enrollment in the 1991-92 school year, divide the difference by enrollment in the 1991-92 school year and add the quotient obtained to 110%; (E) if enrollment in the 1992-93 school year is greater than enrollment in the 1991-92 school year, multiply the amount determined under (A) by the sum obtained under (D) and if enrollment in the 1992-93 school year is equal to or less than enrollment in the 1991-92 school year, multiply the amount determined under (A) by 110%. The product is transitional state financial aid.

(2) The provisions of this subsection shall expire on June 30, 1993.

(d) "Base state aid per pupil" means an amount of state financial aid per pupil. Subject to the other provisions of this subsection, the amount of base state aid per pupil is $3,600. The amount of base state aid per pupil is subject to reduction commensurate with any reduction under K.S.A. 1994 Supp. 75-6704, and amendments thereto, in the amount of the appropriation from the state

general fund for general state aid. If the amount of appropriation for general state aid is insufficient to pay in full the amount each district is entitled to receive for any school year, the amount of base state aid per pupil for such school year is subject to reduction commensurate with the amount of the insufficiency.

(e) "Local effort" means the sum of an amount equal to the proceeds from the tax levied under authority of K.S.A. 72-6431, and amendments thereto, and an amount equal to any unexpended and unencumbered balance remaining in the general fund of the district, except amounts received by the district and authorized to be expended for the purposes specified in K.S.A. 72-6430, and an amount equal to any unexpended and unencumbered balances remaining in the program weighted funds of the district, except any amount in the vocational education fund of the district if the district is operating an area vocational school, and an amount equal to any remaining proceeds from taxes levied under authority of K.S.A. 72-7056 and 72-7072, and amendments thereto, prior to the repeal of such statutory sections, and an amount equal to the amount deposited in the general fund in the current school year from amounts received in such year by the district under the provisions of subsection (a) of K.S.A. 72-1046a, and amendments thereto, and an amount equal to the amount deposited in the general fund in the current school year from amounts received in such year by the district pursuant to contracts made and entered into under authority of K.S.A. 72-6757, and amendments thereto, and an amount equal to the amount credited to the general fund in the current school year from amounts distributed in such year to the district

under the provisions of articles 17 and 34 of chapter 12 of Kansas Statutes Annotated and under the provisions of articles 42 and 51 of chapter 79 of Kansas Statutes Annotated, and an amount equal to the federal impact aid of a district.

(f) "Federal impact aid" means an amount equal to the federally qualified percentage of the amount of moneys a district receives in the current school year under the provisions of title I of public law 874 and congressional appropriations therefore, excluding amounts received for assistance in cases of major disaster and amounts received under the low-rent housing program. The amount of federal impact aid defined herein as an amount equal to the federally qualified percentage of the amount of moneys provided for the district under title I of public law 874 shall be determined by the state board in accordance with terms and conditions imposed under the provisions of the public law and rules and regulations thereunder.

72-6411. Transportation weighting; definitions. (a) The transportation weighting of each district shall be determined by the state board as follows:

(1) Determine the total expenditures of the district during the preceding school year from all funds for transporting pupils of public and nonpublic schools on regular school routes;

(2) divide the amount determined under (1) by the total number of pupils who were included in the enrollment of the district in the preceding school year and for whom transportation was made available by the district;

(3) multiply the quotient obtained under (2) by the total number of pupils who were included in the enrollment of the district in the preceding school year, were residing less than 2½ miles by the usually traveled road from the school building they attended, and for whom transportation was made available by the district;

(4) multiply the product obtained under (3) by 50%;

(5) subtract the product obtained under (4) from the amount determined under (1);

(6) divide the remainder obtained under (5) by the total number of pupils who were included in the enrollment of the district in the preceding school year, were residing 2½ miles or more by the usually traveled road from the school building they attended and for whom transportation was made available by the district. The quotient is the per-pupil cost of transportation;

(7) on a density-cost graph plot the per-pupil cost of transportation for each district;

(8) construct a curve of best fit for the points so plotted;

(9) locate the index of density for the district on the base line of the density-cost graph and from the point on the curve of best fit directly above this point of index of density follow a line parallel to the base line to the point of intersection with the vertical line, which point is the formula per-pupil cost of transportation of the district;

(10) divide the formula per-pupil cost of transportation of the district by base state aid per pupil;

(11) multiply the quotient obtained under (10) by the number of pupils who are included in the enrollment of the district, are residing 2 1/2 miles or more by the usually traveled road to the school building they attend, and for whom transportation is being made available by, and at the expense of, the district. The product is the transportation weighting of the district.

(b) For the purpose of providing accurate and reliable data on pupil transportation, the state board is authorized to adopt rules and regulations prescribing procedures which districts shall follow in reporting pertinent information relative thereto, including uniform reporting of expenditures for transportation.

(c) "Index of density" means the number of pupils who are included in the enrollment of a district in the current school year, are residing 2 1/2 miles or more by the usually traveled road from the school building they attend, and for whom transportation is being made available on regular school routes by the district, divided by the number of square miles of territory in the district.

(d) "Density-cost graph" means a drawing having: (1) A horizontal or base line divided into equal intervals of density, beginning with zero on the left; and (2) a scale for per-pupil cost of transportation to be shown on a line perpendicular to the base line at the left end thereof, such scale to begin with zero dollars at the base line ascending by equal per-pupil cost intervals.

(e) "Curve of best fit" means the curve on a density-cost graph drawn so the sum of the distances squared from such line to each of the points plotted on the graph is the least possible.

(f) The provisions of this section shall take effect and be in force from and after July 1, 1992.

72-6412. Low enrollment weighting. The low enrollment weighting of each district with under 1,900 enrollment shall be determined by the state board as follows:

(a) Determine the amount of the median budget per pupil for the 1991-92 school year of districts with 75-125 enrollment in such school year;

(b) determine the amount of the median budget per pupil for the 1991-92 school year of districts with 200-399 enrollment in such school year;

(c) determine the amount of the median budget per pupil for the 1991-92 school year of districts with 1,900 and over enrollment;

(d) prescribe a schedule amount for each of the districts by preparing a schedule based upon an accepted mathematical formula and derived from a linear transition between (1) the median budgets per pupil determined under (a) and (b), and (2) the median budgets per pupil determined under (b) and (c). The schedule amount for districts with 0-99 enrollment is an amount equal to the amount of the median budget per pupil determined under (a). The schedule amount for districts with 100-299 enrollment is the amount derived from the linear transition under (1). The schedule amount for districts with 300-1,899 enrollment is the amount derived from the linear transition under (2);

(e) for districts with 0-99 enrollment:

(1) Subtract the amount determined under (c) from the amount determined under (a);

(2) divide the remainder obtained under (1) by the amount determined under (c);

(3) multiply the quotient obtained under (2) by the enrollment of the district in the current school year. The product is the low enrollment weighting of the district;

(f) for districts with 100-299 enrollment:

(1) Subtract the amount determined under (c) from the schedule amount of the district;

(2) divide the remainder obtained under (1) by the amount determined under (c);

(3) multiply the quotient obtained under (2) by the enrollment of the district in the current school year. The product is the low enrollment weighting of the district;

(g) for districts with 300-1,899 enrollment:

(1) Subtract the amount determined under (c) from the schedule amount of the district;

(2) divide the remainder obtained under (1) by the amount determined under (c);

(3) multiply the quotient obtained under (2) by the enrollment of the district in the current school year. The product is the low enrollment weighting of the district.

(h) The provisions of this section shall take effect and be in force from and after July 1, 1992.

72-6413. Program weighting. The program weighting of each district shall be determined by the state board as follows:

(a) Compute full time equivalent enrollment in programs of bilingual education and multiply the computed enrollment by 0.2;

(b) compute full time equivalent enrollment in approved vocational education programs and multiply the computed enrollment by 0.5;

(c) add the products obtained under (a) and (b). The sum is the program weighting of the district.

(d) The provisions of this section shall take effect and be in force from and after July 1, 1992.

72-6414. At-risk pupil weighting. (a) The at-risk pupil weighting of each district shall be determined by the state board by multiplying the number of at-risk pupils included in enrollment of the district by .05. The product is the at-risk pupil weighting of the district.

(b) The provisions of this section shall take effect and be in force from and after July 1, 1992.

72-6415. School facilities weighting. (a) The school facilities weighting of each district shall be determined in each school year in which such weighting may be assigned to enrollment of the district as follows:

(1) Determine the number of pupils, included in enrollment of the district, who are attending a new school facility;

(2) multiply the number of pupils determined under (1) by .25. The product is the school facilities weighting of the district.

(b) The provisions of this section shall take effect and be in force from and after July 1, 1992.

72-6416. General state aid; determination of entitlement; amount. (a) In each school year, the state board shall determine entitlement of each district to general state aid for the school year as provided in this section.

(b) The state board shall determine the amount of the district's local effort for the school year. If the amount of the district's local effort is greater than the amount of state financial aid determined for the district for the school year, the district shall not be entitled to general state aid. If the amount of the district's local effort is less than the amount of state financial aid determined for the district for the school year, the state board shall subtract the amount of the district's local effort from the amount of state financial aid. The remainder is the amount of general state aid the district is entitled to receive for the current school year.

(c) The provisions of this section shall take effect and be in force from and after July 1, 1992.

72-6417. Same; distribution; time; disposition. (a) The distribution of general state aid under this act shall be made in accordance with appropriation acts each year as provided in this section.

(b) (1) In the months of July through May of each school year, the state board shall determine the amount of general state aid which will be required by each district to maintain operations in each such month. In making such determination, the state board shall take into consideration the district's access to local effort sources and the obligations of the general fund which must be satisfied during the month. The amount determined by the state board under this provision is the amount of general state

aid which will be distributed to the district in the months of July through May;

(2) in the month of June of each school year, payment shall be made of the full amount of the general state aid entitlement determined for the school year, less the sum of the monthly payments made in the months of July through May.

(c) Payments of general state aid shall be distributed to districts once each month at a time to be determined by the state board. The state board shall certify to the director of accounts and reports the amount due as general state aid to each district in each of the months of July through June. Such certification, and the amount of general state aid payable from the state general fund, shall be approved by the director of the budget. The director of accounts and reports shall draw warrants on the state treasurer payable to the district treasurer of each district entitled to payment of general state aid, pursuant to vouchers approved by the state board. Upon receipt of such warrant, each district treasurer shall deposit the amount of general state aid in the general fund.

(d) The provisions of this section shall take effect and be in force from and after July 1, 1992.

72-6418. Overpayments; underpayments. (a) In the event any district is paid more than it is entitled to receive under any distribution made under this act or under any statute repealed by this act, the state board shall notify the district of the amount of such overpayment, and such district shall remit the same to the state board. The state board shall remit any moneys so received to the state treasurer, and the state treasurer

shall deposit the same in the state treasury to the credit of the state school district finance fund. If any district fails so to remit, the state board shall deduct the excess amounts so paid from future payments becoming due to the district. In the event any district is paid less than the amount to which it is entitled under any distribution made under this act, the state board shall pay the additional amount due to any time within the school year in which the underpayment was made or within 60 days after the end of such school year.

(b) The provisions of this section shall take effect and be in force from and after July 1, 1992.

72-6419. Certification of enrollment data and budget. (a) On or before October 10 of each school year, the clerk or superintendent of each district shall certify under oath to the state board a report showing the total enrollment of the district by grades maintained in the schools of the district and such other reports as the state board may require. Each such report shall show postsecondary education enrollment, vocational education enrollment, special education enrollment, bilingual education enrollment, and at-risk pupil enrollment in such detail and form as is specified by the state board. Upon receipt of such reports, the state board shall examine the reports and if the state board finds any errors in any such report, the state board shall consult with the district officer furnishing the report and make such corrections in the report as are necessary. One of such district officers shall also certify to the state board, on or before August 25 of each year, a copy of the budget adopted by the district.

(b) The provisions of this section shall take effect and be in force from and after July 1, 1992.

72-6420. Special education fund. (a) There is hereby established in every district a fund which shall be called the special education fund, which fund shall consist of all moneys deposited therein or transferred thereto according to law. Notwithstanding any other provision of law, all moneys received by the district from whatever source for special education shall be credited to the special education fund established by this section, except that moneys received by a district pursuant to lawful agreements made under K.S.A. 72-968, and amendments thereto, shall be credited to the special fund established under the agreements. The expenses of a district directly attributable to special education shall be paid from the special education fund and from special funds established under K.S.A. 72-968, and amendments thereto.

Obligations of a district pursuant to lawful agreements made under K.S.A. 72-968, and amendments thereto, shall be paid from the special education fund established by this section.

(b) The provisions of this section shall take effect and be in force from and after July 1, 1992.

72-6421. Vocational education fund. (a) There is hereby established in every district a fund which shall be called the vocational education fund. All moneys received by a district for any course or program authorized and approved under the provisions of article 44 of chapter 72 of Kansas Statutes Annotated, except for courses and programs conducted in an area vocational school, shall be credited to the vocational education fund.

All moneys received by the district from tuition, fees or charges or from any other source for vocational education courses or programs, except for courses and programs conducted in an area vocational school, shall be credited to the vocational education fund. The expenses of a district directly attributable to vocational education shall be paid from the vocational education fund.

(b) Obligations of a district pursuant to lawful agreements made under K.S.A. 72-4421, and amendments thereto, shall be paid from the vocational education fund established by this section. If any such agreement expresses an obligation of a district in terms of a mill levy, such obligation shall be construed to mean an amount equal to that which would be produced by the levy.

(c) The provisions of this section shall take effect and be in force from and after July 1, 1992.

72-6422. Area vocational school fund. (a) There is hereby established in every district operating an area vocational school a fund which shall be called the area vocational school fund, which fund shall consist of all federal and state moneys received by the district under the provisions of article 44 of chapter 72 of Kansas Statutes Annotated, except moneys received for courses and programs not conducted in the area vocational school. All moneys received by the district from tuition, fees or charges or from any other source for vocational education courses or programs conducted in the area vocational school operated by the district shall be credited to the area vocational school fund. The expenses of a district

directly attributable to operation of an area vocational school shall be paid from the area vocational school fund.

(b) The provisions of this section shall take effect and be in force from and after July 1, 1992.

72-6423. Driver training fund. (a) There is hereby established in every district a fund which shall be called the driver training fund which fund shall consist of all moneys deposited therein or transferred thereto according to law. All moneys received by the district from distributions made from the state safety fund and the motorcycle safety fund and from tuition, fees or charges for driver training courses shall be credited to the driver training fund. The expenses of a district directly attributable to driver training shall be paid from the driver training fund.

(b) The provisions of this section shall take effect and be in force from and after July 1, 1992.

72-6424. Food service fund. (a) There is hereby established in every district a fund which shall be called the food service fund, which fund shall consist of all moneys deposited therein or transferred thereto according to law. All moneys received by the district for food service and from charges for food service shall be credited to the food service fund. The expenses of a district attributable to food service shall be paid from the food service fund.

(b) The provisions of this section shall take effect and be in force from and after July 1, 1992.

72-6425. Transportation fund. (a) There is hereby established in every district a fund which shall be called

the transportation fund which fund shall consist of all moneys deposited therein or transferred thereto according to law. All moneys received by the district for pupil transportation shall be credited to the transportation fund. The expenses of a district attributable to pupil transportation shall be paid from the transportation fund. Any district may transfer moneys from its capital outlay fund to its transportation fund for the purpose of purchasing buses and bus equipment. If a board determines that any moneys which have been transferred to its transportation fund from its capital outlay fund are not needed for the purchase of buses or bus equipment, the Board may transfer the moneys back to the capital outlay fund.

(b) The provisions of this section shall take effect and be in force from and after July 1, 1992.

72-6426. Contingency reserve fund. (a) There is hereby established in every district a fund which shall be called the contingency reserve fund, which fund shall consist of all moneys deposited therein or transferred thereto according to law. The fund shall be maintained for payment of expenses of a district attributable to financial emergencies or contingencies which could not have been reasonably foreseen at the time of adoption of the general fund budget. Except as otherwise provided in subsection (b), at no time in any school year shall the amount maintained in the fund exceed an amount equal to 2% of the general fund budget of the district for the school year.

(b) In any school year, if the amount in the contingency reserve fund of a district is in excess of the amount

authorized under subsection (a) to be maintained in the fund, and if such excess amounts is the result of a reduction in the general fund budget of the district for the school year because of a decrease in enrollment, the district may maintain the excess amount in the fund until depletion of such excess amount by expenditure from the fund for the purposes thereof.

72-6427. Miscellaneous revenues; disposition. (a) Except as otherwise provided in this section, any revenues of a district, not required by law to be deposited in or credited to a specific fund, shall be deposited in or credited to any program weighted fund or any categorical fund of the district or to the capital outlay fund of the district.

(b) At the discretion of the board of any district, revenues earned from the investment of an activity fund of the district in accordance with the provisions of K.S.A. 12-1675, and amendments thereto, may be deposited in or credited to such activity fund.

(c) (1) At the discretion of the board of any district and subject to provision (2), any revenues specified in subsections (a) and (b) may be deposited in or credited to the general fund of the district in any school year for which the allotment system authorized under K.S.A. 75-3722, and amendments thereto, has been inaugurated and applied to appropriations made for general state aid or in any school year for which any portion of the appropriations made for general state aid are lapsed by act of the legislature.

(2) In no event may the amount of revenues deposited in or credited to the general fund of the district

under authority of provision (1) exceed an amount equal to the amount of the reduction in general state aid entitlement of the district determined by the state board to be the result of application of the allotment system to the appropriations made for general state aid or of the lapse of any portion thereof by act of the legislature.

(d) At the discretion of the board of any district, revenues received by the district from the federal government as the district's share of the proceeds derived from sale by the federal government of its rights to oil, gas and other minerals located beneath the surface of lands within the district's boundaries may be deposited in the bond and interest fund of the district and used for the purposes of such fund. If at any time all indebtedness and obligations of such fund have been fully paid and canceled, the revenues authorized by this subsection to be deposited in such fund shall be disposed of as provided in subsection (a).

(e) To the extent that K.S.A. 72-1623, 72-8804 and 79-2958, and amendments to such sections, conflict with this section, this section shall control.

(f) The provisions of this section shall take effect and be in force from and after July 1, 1992.

72-6428. Transfers from general fund authorized; conditions; limitations. (a) Any lawful transfer of moneys from the general fund of a district to any other fund shall be an operating expense in the year the transfer is made. The board of any district may transfer moneys from the general fund to any categorical fund of the district in any school year. The board of any district

may transfer moneys from the general fund to any program weighted fund of the district in any school year, subject to the following conditions:

(1) No board shall transfer moneys in any amount from the general fund to a program weighted fund prior to maturation of the obligation of the fund necessitating the transfer.

(2) The Board may transfer moneys in an amount not to exceed the amount of the obligation of the program weighted fund necessitating the transfer.

(b) The board of any district may transfer moneys from the general fund to the technology education fund of the district in any school year, subject to the conditions imposed upon transferability of moneys from the general fund to program weighted funds of the district.

(c) The board of any district may transfer moneys from the general fund to the contingency reserve fund of the district in any school year, subject to the limitations imposed upon the amount authorized to be maintained in the contingency reserve fund under K.S.A. 72-6426, and amendments thereto.

(d) The board of any district may transfer moneys from the general fund to the capital outlay fund of the district in any school year, subject to the following conditions:

(1) No board shall transfer moneys in any amount from the general fund to the capital outlay fund prior to June 1 in any school year.

(2) The board of any of the districts with 10,000 or more enrollment may transfer moneys in an amount not

to exceed an amount equal to 1% of the general fund budget.

(3) The board of any district, other than the districts with 10,000 or more enrollment, may transfer moneys in an amount not to exceed an amount equal to 2% of the general fund budget.

(4) No board shall transfer moneys in any amount from the general fund to the capital outlay fund in any school year commencing after June 30, 1993, unless such board, in its adopted budget for such year, shall have budgeted a capital outlay levy at (A) not less than a 3.5 mill rate or (B) not less than the mill rate necessary to produce the same amount of money that would have been produced by a 3.5 mill rate in the 1988-89 school year, whichever of (A) or (B) is the greater mill rate.

(e) Any district may make capital outlay expenditures from the general fund for acquisition of equipment and repair of school buildings.

(f) The provisions of this section shall take effect and be in force from and after July 1, 1992.

72-6429. Transfers to general fund authorized, limitations. (a) In each school year, any board may transfer to its general fund from any fund to which transfers from the general fund are authorized an amount not to exceed an amount equal to the amount transferred from the general fund to any such fund in the same school year.

(b) The provisions of this section shall take effect and be in force from and after July 1, 1992.

72-6430. Expenditures for certain purposes not operating expenses. Expenditures of a district for the following purposes are not operating expenses:

(a) Payments to another district in an adjustment of rights as provided in K.S.A. 72-6776, and amendments thereto, or upon transfer of territory as provided in K.S.A. 72-7105, 72-7106 or 72-7107, and amendments to such sections, if paid from any fund other than the general fund.

(b) Payments to another district under K.S.A. 72-7105a, and amendments thereto.

(c) The maintenance of student activities which are reimbursed.

(d) Expenditures from any lawfully authorized fund of a district other than its general fund.

(e) The provision of educational services for pupils residing at the Flint Hills job corps center or for pupils confined in a juvenile detention facility for which the district is reimbursed by a grant of state moneys as provided in K.S.A. 1994 Supp. 72-8187.

(f) Programs financed in part or in whole by federal funds which may be expended although not included in the budget of the district, excepting funds received under the provisions of title I of public law 874 (but not including in such exception amounts received for assistance in cases of major disaster and amounts received under the low-rent housing program), to the extent of the federal funds to be provided.

72-6431. Ad valorem tax levy required; purposes; rate; disposition of proceeds. (a) The board of each district shall levy an ad valorem tax upon the taxable tangible property of the district in the school years specified in subsection (b) for the purpose of:

(1) Financing that portion of the district's general fund budget which is not financed from any other source provided by law;

(2) paying a portion of the costs of operating and maintaining public schools in partial fulfillment of the constitutional obligation of the legislature to finance the educational interests of the state; and

(3) paying a portion of the principal and interest on bonds issued by cities under authority of K.S.A. 12-1774, and amendments thereto, for the financing of redevelopment projects upon property located within the district.

(b) The tax required under subsection (a) shall be levied at a rate of 35 mills in the 1994-95 and 1995-96 school years.

(c) The proceeds from the tax levied by a district under authority of this section, except the proceeds of such tax levied for the purpose of paying a portion of the principal and interest on bonds issued by cities under authority of K.S.A. 12-1774, and amendments thereto, for the financing of redevelopment projects upon property located within the district, shall be deposited in the general fund of the district.

(d) On June 1 of each year, the amount, if any, by which a district's local effort exceeds the amount of the district's state financial aid, as determined by the state

board, shall be remitted to the state treasurer. Upon receipt of any such remittance, the state treasurer shall deposit the same in the state treasury to the credit of the state school district finance fund.

(e) No district shall proceed under K.S.A. 79-1964, 79-1964a or 79-1964b, and amendments to such sections.

72-6432. Exceeding general fund budget; penalty. (a) In case a district expends in any school year an amount for operating expenses which exceeds its general fund budget, the state board shall determine the excess and deduct the same from amounts of general state aid payable to the district during the next school year.

(b) The provisions of this section shall take effect and be in force from and after July 1, 1992.

72-6433. Local option budget; authorization to adopt; conditions; limitations; definitions; supplemental general fund. (a) (1) The board of any district may adopt a local option budget in each school year, commencing with the 1993-94 school year, for a period of time not to exceed four school years in an amount not to exceed the state prescribed percentage of the amount of state financial aid determined for the district in the school year if the board of the district determines that adoption of such a budget would be in the best interests of the district. No district may adopt a local option budget under authority of this subsection until a resolution authorizing adoption of such a budget is passed by the board and published once in a newspaper having general circulation in the district. The resolution shall be published in substantial compliance with the following form:

Unified School District No. _____

_____ County, Kansas.

RESOLUTION

Be It Resolved that:

The board of education of the above-named school district shall be authorized to adopt a local option budget in each school year for a period of time not to exceed ___ years in an amount not to exceed ___% of the amount of state financial aid determined for the current school year. The percentage specified in this resolution may be reduced if the state prescribed percentage is reduced by operation of state law. The local option budget authorized by this resolution may be adopted, unless a petition in opposition to the same, signed by not less than 5% of the qualified electors of the school district, is filed with the county election officer of the home county of the school district within 30 days after publication of this resolution. In the event a petition is filed, the county election officer shall submit the question of whether adoption of the local option budget shall be authorized to the electors of the school district at an election called for the purpose or at the next general election, as is specified by the board of education of the school district.

CERTIFICATE

This is to certify that the above resolution was duly adopted by the board of education of Unified School District No. ___ ___ County, Kansas, on the ___ day of ___, 19___

_____

Clerk of the board of education.

All of the blanks in the resolution shall be appropriately filled. The blank preceding the word "years" shall be filled with a specific number, not to exceed the number 4, and the blank preceding the percentage symbol shall be filled with a specific number. No word shall be inserted in either of the blanks. The percentage specified in the resolution shall not exceed the state prescribed percentage. The resolution shall be published once in a newspaper having general circulation in the school district. If no petition as specified above is filed in accordance with the provisions of the resolution, the board may adopt a local option budget. If a petition is filed as provided in the resolution, the board may notify the county election officer of the date of an election to be held to submit the question of whether adoption of a local option budget shall be authorized. If the board fails to notify the county election officer within 30 days after a petition is filed, the resolution shall be deemed abandoned and no like resolution shall be adopted by the board within the nine months following publication of the resolution.

(2) If any district is authorized to adopt a local option budget, but the board of such district chooses, in

any year, not to adopt such a budget, or chooses to adopt such budget in an amount less than the amount of the district prescribed percentage of the amount of state financial aid in any school year, such board of education may do so. If the board of any district refrains from adopting a local option budget in any one or more school years or refrains from budgeting the total amount authorized for any one or more school years, the authority of such district to adopt a local option budget shall not thereby be extended beyond the original period specified in the resolution authorizing adoption of such budget, nor shall the amount authorized to be budgeted in any succeeding school year be increased thereby.

(3) Whenever an initial resolution has been adopted under this subsection, and such resolution specified a lesser percentage than the state prescribed percentage, the board of the district may adopt a second resolution under the same procedure as provided for the initial resolution and subject to the same conditions, and shall be authorized to increase the percentage as specified in such second resolution for the remainder of the period of time specified in the initial resolution. Any percentage specified in a second resolution shall be limited so that the sum of the percentage authorized in the initial resolution and the percentage authorized in the second resolution is not in excess of the state prescribed percentage in any school year.

(4) The board of any district that has adopted a local option budget and levied a tax under authority of K.S.A. 72-6435, and amendments thereto, may initiate, at any time after the final levy is certified to the county clerk under any current authorization, procedures to

renew its authority to adopt a local option budget subject to the conditions and in the manner specified in provision (1) of this subsection and, at four-year intervals thereafter, may in like manner and subject to like conditions renew such authorization for successive four-year periods.

(5) As used in this subsection:

(A) "Authorized to adopt a local option budget" means that a district has adopted a resolution under this subsection, has published the same, and either that the resolution was not protested or that it was protested and an election was held by which the adoption of a local option budget was approved.

(B) "District prescribed percentage" means the percentage specified in a resolution under which a district is authorized to adopt a local option budget. No such percentage shall exceed the state prescribed percentage and is subject to reduction by operation of state law.

(C) "State prescribed percentage" means 25%. If the amount of base state aid per pupil is increased by act of the legislature, the state prescribed percentage shall be reduced by a number of percentage points equal to the number of percentage points by which the amount of base state aid per pupil is increased.

(b) There is hereby established in every district that adopts a local option budget a fund which shall be called the supplemental general fund. The fund shall consist of all amounts deposited therein or credited thereto according to law. Amounts in the supplemental general fund may be expended for any purpose for which expenditures

from the general fund are authorized or may be transferred to the general fund of the district or to any program weighted fund or categorical fund of the district. Any unexpended and unencumbered cash balance remaining in the supplemental general fund of a district at the conclusion of any school year in which a local option budget is adopted shall be disposed of as provided in this subsection. If the district did not receive supplemental general state aid in the school year and the district is authorized to adopt a local option budget in the ensuing school year, the total amount of the cash balance remaining in the supplemental general fund shall be maintained in such fund or transferred to the general fund of the district. If such a district is not authorized to adopt a local option budget in the ensuing school year, the total amount of the cash balance remaining in the supplemental general fund shall be transferred to the general fund of the district. If the district received supplemental general state aid in the school year, transferred or expended the entire amount budgeted in the local option budget for the school year, and is authorized to adopt a local option budget in the ensuing school year, the total amount of the cash balance remaining in the supplemental general fund shall be maintained in such fund or transferred to the general fund of the district. If such a district is not authorized to adopt a local option budget in the ensuing school year, the total amount of the cash balance remaining in the supplemental general fund shall be transferred to the general fund of the district. If the district received supplemental general state aid in the school year, did not transfer or expend the entire amount budgeted in the local option budget for the school year,

and is not authorized to adopt a local option budget in the ensuring school year, the total amount of the cash balance remaining in the supplemental general fund shall be transferred to the general fund of the district. If the district received supplemental general state aid in the school year, did not transfer or expend the entire amount budgeted in the local option budget for the school year, and is authorized to adopt a local option budget in the ensuing school year, the state board shall determine the ratio of the amount of supplemental general state aid received to the amount of the local option budget of the district for the school year and multiply the total amount of the cash balance remaining in the supplemental general fund by such ratio. An amount equal to the amount of the product shall be transferred to the general fund of the district. The amount remaining in the supplemental general fund may be maintained in such fund or transferred to the general fund of the district.

72-6434. Same; supplemental general state aid; determination of entitlement; amount; payments. (a) In each school year, each district that has adopted a local option budget is eligible for entitlement to an amount of supplemental general state aid. Entitlement of a district to supplemental general state aid shall be determined by the state board as provided in this subsection. The state board shall:

(1) Determine the amount of the assessed valuation per pupil in the preceding school year of each district in the state;

(2) rank the districts from low to high on the basis of the amounts of assessed valuation per pupil determined under (1);

(3) identify the amount of the assessed valuation per pupil located at the 75th percentile of the amounts ranked under (2);

(4) divide the assessed valuation per pupil of the district in the preceding school year by the amount identified under (3);

(5) subtract the ratio obtained under (4) from 1.0. If the resulting ratio equals or exceeds 1.0, the eligibility of the district for entitlement to supplemental general state aid shall lapse. If the resulting ratio is less than 1.0, the district is entitled to receive supplemental general state aid in an amount which shall be determined by the state board by multiplying the amount of the local option budget of the district by such ratio. The product is the amount of supplemental general state aid the district is entitled to receive for the school year.

(b) If the amount of appropriations for supplemental general state aid is less than the amount each district is entitled to receive for the school year, the state board shall prorate the amount appropriated among the districts in proportion to the amount each district is entitled to receive.

(c) Payments of supplemental general state aid shall be distributed to districts at a time to be determined by the state board. The state board shall certify to the director of accounts and reports the amount due each district, and the director of accounts and reports shall draw a

warrant on the state treasurer payable to the treasurer of the district. Upon receipt of the warrant, the treasurer of the district shall credit the amount thereof to the supplemental general fund of the district to be used for the purposes of such fund.

(d) The provisions of this section shall take effect and be in force from and after July 1, 1992.

72-6435. Same; ad valorem tax levy authorized; disposition of proceeds. (a) In each school year, the board of every district that has adopted a local option budget may levy an ad valorem tax on the taxable tangible property of the district for the purpose of financing that portion of the district's local option budget which is not financed from any other source provided by law and for the purpose of paying a portion of the principal and interest on bonds issued by cities under authority of K.S.A. 12-1774, and amendments thereto, for the financing of redevelopment projects upon property located within the district.

(b) The proceeds from the tax levied by a district under authority of this section, except the proceeds of such tax levied for the purpose of paying a portion of the principal and interest on bonds issued by cities under authority of K.S.A. 12-1774, and amendments thereto, for the financing of redevelopment projects upon property located within the district, shall be deposited in the supplemental general fund of the district.

(c) No district shall proceed under K.S.A. 79-1964, 79-1964a or 79-1964b, and amendments to such sections.

(d) The provisions of this section shall take effect and be in force from and after July 1, 1992.

72-6436. New districts; boundary changes; revisions. (a) Whenever a new district has been established or the boundaries of a district have been changed, the state board shall make appropriate revisions concerning the affected districts as may be necessary for the purposes of this act to reflect such establishment of a district or changes in boundaries. Such revisions shall be based on the most reliable data obtainable from the superintendent of the district and the county clerk.

(b) The provisions of this section shall take effect and be in force from and after July 1, 1992.

72-6437. Rules and regulations. (a) The state board may adopt rules and regulations for the administration of this act, including the classification of expenditures of districts to insure uniform reporting of operating expenses.

(b) The provisions of this section shall take effect and be in force from and after July 1, 1992.

72-6438. State school district finance fund; sources; use. (a) The state school district finance fund, established by K.S.A. 1991 Supp. 72-7081 prior to its repeal by this act, is hereby continued in existence and shall consist of (1) all moneys credited to such fund under K.S.A. 72-6418 and 72-6431, and amendments thereto, and (2) all amounts transferred to such fund.

(b) The state school district finance fund shall be used for the purpose of school district finance and for no other governmental purpose. It is the intent of the legislature that the fund shall remain intact and inviolate for

such purpose, and moneys in the fund shall not be subject to the provisions of K.S.A. 75-3722, 75-3725a and 75-3726a, and amendments thereto.

(c) Amounts in the state school district finance fund shall be allocated and distributed to school districts as a portion of general state aid entitlements provided for under this act.

72-6439. Quality performance accreditation system; goals; outcomes; standards; pupil assessments; school site councils; participation by districts required; professional development programs. (a) In order to accomplish the mission for Kansas education, the state board of education shall design and adopt a quality performance accreditation system for Kansas schools. The accreditation system will be based upon goals for schools which will be framed in measurable terms and will define the following outcomes:

(1) Teachers establish high expectations for learning and monitoring pupil achievement through multiple assessment techniques;

(2) schools have a basic mission which prepares the learners to live, learn, and work in a global society;

(3) schools provide planned learning activities within an orderly and safe environment which is conducive to learning;

(4) schools provide instructional leadership which results in improved pupil performance in an effective school environment;

(5) pupils have the communication skills necessary to live, learn, and work in a global society;

(6) pupils think creatively and problem-solve in order to live, learn and work in a global society;

(7) pupils work effectively both independently and in groups in order to live, learn and work in a global society;

(8) pupils have the physical and emotional well-being necessary to live, learn and work in a global society;

(9) all staff engage in ongoing professional development;

(10) pupils participate in lifelong learning.

(b) In designing the quality performance accreditation system, the state board of education shall incorporate a comprehensive outcomes process under which standards indicating an identified level of excellence will be established and shall provide a means of assessment for attainment by pupils in kindergarten through grade 12 of a minimum of three benchmark levels in the skills domains of mathematics, science, communications, including reading, writing, speaking and listening, and social studies, including American history and geography. In order to ensure that the academic standards established under this subsection are equal to or greater than those in the rest of the United States and other parts of the world, and in order to ensure that the outcomes process, standards and assessments emphasize higher order thinking skills, the state board of education shall utilize the services of one or more consultants familiar with worldwide standards of education. The standards

shall be established on or before July 1, 1993, and shall be reviewed not less often than every three years.

(c)(1) On or before January 1, 1993, each school in every district which operates more than one school shall establish a school site council. The council shall be composed of the principal and representatives of: Teachers and other school personnel, parents of pupils attending the school, the business community, and other community groups. A school site council may be established in school districts which operate only one school or, in lieu thereof, the board of education of the school district shall serve as the council. School site councils shall be responsible for providing advice and counsel in evaluating state, school district, and school site performance goals and objectives and in determining the methods that should be employed at the school site to meet these goals and objectives.

(2) The state board of education will evaluate the work of the school site councils and the effectiveness thereof in facilitating educational improvement and restructuring. The results of the state board's evaluation will be contained in a report that will be published on July 1, 1995.

(3) The provisions of this subsection shall expire on June 30, 1996, unless extended by the legislature during the 1996 regular session.

(d) In the 1994-95 school year, at least one school in each district shall participate in the quality performance accreditation system.

(e) In the 1995-96 school year, every school in every district shall participate in the quality performance accreditation system.

(f) In order to be eligible for general state aid under this act in the 1996-97 school year and in each school year thereafter, each district will evaluate its progress toward achieving defined outcomes and submit an annual report thereon to the state board.

(g) Each district shall schedule in the 1992-93 school year an amount of time equal to not less than two school days, and in the 1993-94 school year an amount of time equal to not less than three school days, for the purpose of engaging professional employees of the district in professional development programs related to implementation and effectuation of the provisions of this section. The amount of time scheduled by a district under the provisions of this subsection shall be considered an additional part of the school term.

(h) The provisions of this section shall take effect and be in force from and after July 1, 1992.

History: L. 1992, ch. 280, § 35; May 28.

72-6440. Severability. (a) If any clause, paragraph, subsection or section of the school district finance and quality performance act shall be held invalid or unconstitutional, it shall be conclusively presumed that the legislature would have enacted the remainder of the act without such invalid or unconstitutional clause, paragraph, subsection or section.

(b) The provisions of this section shall take effect and be in force from and after July 1, 1992.

72-6441. New school facilities; ad valorem tax levy for commencing operation; conditions; limitations; disposition of proceeds; applicability. (a) The board of any district to which the provisions of this section apply may levy an ad valorem tax on the taxable tangible property of the district each year for a period of time not to exceed two years in an amount not to exceed the amount authorized by the state board of tax appeals under this section for the purpose of financing that portion of the costs attributable to commencing operation of one or more new school facilities which is not financed from any other source provided by law. The state board of tax appeals may authorize the district to make a levy which will produce an amount that is not greater than the difference between the amount of costs directly attributable to commencing operation of one or more new school facilities and the amount provided for such purpose under the school district finance and quality performance act. If the district is not eligible, or will be ineligible, for school facilities weighting in any one or more years during the two-year period for which the district is authorized to levy a tax under this section, the state board of tax appeals may authorize the district to make a levy, in such year or years of ineligibility, which will produce an amount that is not greater than the actual amount of costs attributable to commencing operation of the facility or facilities.

(b) The state board of tax appeals may adopt rules and regulations necessary to properly effectuate the provisions of this section, including rules relating to the evidence required in support of a district's claim that the costs attributable to commencing operation of one or

more new school facilities are in excess of the amount provided for such purpose under the school district finance and quality performance act.

(c) The proceeds from the tax levied by a district under authority of this section shall be deposited in the supplemental general fund of the district, budgeted in the local option budget of the district as an addition to the amount of such budget adopted under authority of and in accordance with the provisions of K.S.A. 72-6433, and amendments thereto, and used exclusively to supplement amounts expended from the general fund of the district for payment of the costs attributable to commencing operation of new school facilities.

(d) The provisions of this section apply to any district that (1) commenced operation of one or more new school facilities in the school year preceeding the current school year or has commenced or will commence operation of one or more new school facilities in the current school year or any or all of the foregoing, and (2) is authorized to adopt and has adopted a local option budget in an amount equal to the state prescribed percentage of the amount of state financial aid determined for the district in the current school year, and (3) is experiencing extraordinary enrollment growth. A district shall be deemed to be experiencing extraordinary enrollment growth if enrollment in the district has increased in each of the three school years immediately preceding the current school year and if the average (mean) percentage of the sum of the percentage increases in enrollment for such school years is 7% or more.

Supreme Court, U.S.
F I L E D
MAY 25 1995
OFFICE OF THE CLERK

No. 94-1792

In The

Supreme Court of the United States

October Term, 1994

UNIFIED SCHOOL DISTRICT NO. 244, *et al.*,

Petitioners,

v.

STATE OF KANSAS, *et al.*,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Kansas

BRIEF IN OPPOSITION

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Statement of the Case

The Kansas State Board of Education submits this Brief in Opposition to the Petition for Writ of Certiorari filed by Unified School District No. 244 (Burlington, KS) and the individuals associated with that district.

For the reasons articulated below, this respondent believes the Petition fails to present any true conflict of judicial decisions regarding the federal question of an unconstitutional taking of property resulting from Kansas school financing laws. Respondent finds particularly repugnant the petitioners' selfish, parochial notions that the financing of the education of Kansas school children is solely a matter of local concern for "their" students without regard to the obvious significance education plays in American society.

Respondent further believes the claimed violation of "one person-one vote" principles is without merit on its face, and dependent entirely upon petitioners' misreading of the duties imposed on local school districts by the Kansas Constitution. Kan. Const. Art. 6, § 5. This issue is disposed of simply by this Court's acceptance of the Kansas courts' interpretation of its own state constitutional provisions regarding the respective responsibilities and degrees of control over education between the legislature, state board of education, and local school boards.

In addition, this respondent argues that as to both federal questions presented the Kansas court decisions under review turn on their unique facts and the specific state constitutional mandates attendant to the delivery of educational services in our state. This respondent, therefore, disagrees entirely with petitioners' arguments, and

urges denial of the Petition. A brief statement of facts is important to understanding the context of this dispute, and adds to what petitioners represent in their brief.

In 1992, the Kansas Legislature determined it would act in accordance with its constitutional obligations by enacting a new school finance law. Kan. Const. Art. 6, §§ 1 and 6(b). As the Kansas courts observed, this enactment required enormous work by the legislative and executive branches, representing many difficult policy decisions, some of which were politically volatile. App. 73. All other particularities aside, the polestar of the new law is equal educational opportunity for all Kansas students without regard for the wealth or poverty of the district in which the students live. As the trial court observed,

> The legislation resulted in an infusion of money for public school finance, substantially more equality in taxation, a system of accountability to the taxpayer through a mechanism to measure the results deriving from the expenditures, and improved equalization of per pupil expenditures.

App. 73. The new statute seeks to accomplish this by setting a fixed minimum and maximum range for all school district budgets. School districts are able to exceed the statutory minimums by up to 25 percent through local decision making.

Coupled with changes in the financing formula are increased accountability mandates, including periodic review of all schools through outcomes-based accreditation and implementation of various assessment measures. All of these are prepared and monitored by the Kansas State Board of Education, a constitutionally-created entity

with 10 elected members. The new law also requires other school reforms such as increased in-service training of teachers and extension of the school year. A substantial increase in expenditures for most Kansas schools resulted from passage of the Act.

Of particular importance to the federal questions presented here is the Kansas legislature's decision to impose a uniform statewide property tax on all taxable property in the state as a part of the funding component for the increased spending for public education. This uniform tax responded to complaints made against the old funding scheme which produced wide disparities in taxation. For example, in the year immediately preceding enactment of the new law, the 1991-92 general fund mill rate ranged from a low of 9.12 mills for the petitioner (U.S.D. 244) to a high of 97.84 mills. App. 117. In the first year of the new law, and with implementation of a uniform property tax, that range dramatically reduced to a low of 32 mills and a high of 66.05 mills. App. 129.

Under the previous law, petitioners enjoyed "an artificially low tax levy" to fund public education because of the presence of a huge power generating plant within district boundaries. App. 66. This circumstance blessed petitioners with the highest assessed valuation per pupil in the state ($538,138), compared to the median per pupil valuation of $28,876 elsewhere. App. 231 & App. 129. Under the new law, petitioners' levy was only 32.97 mills in 1992-93, which was approximately equal to the median mill levy (32 mills) statewide for all Kansas school districts. App. 127 & 129.

Obviously, the existence of a uniform statewide tax levy results in those school districts with extraordinary property wealth paying more in *ad valorem* taxes than is actually necessary to operate the specific schools in those particular districts. In Kansas, however, the new law caused only 10 of the 304 school districts to generate more tax revenue than required to pay for the budgets adopted locally within the minimums set out by the law. This excess revenue is sometimes referred to as "recapture" money because it is remitted to the state treasury, and then used with other state funds to help pay for education in other parts of Kansas where the property wealth is insufficient to carry the entire load of financing local schools. As the trial court found, the new law resulted in "substantially more equality in taxation." App. 73.

Reasons for Denying the Writ

(a). The claim of excessive taking

The opinions below adequately debunk Petitioners' parochial concerns over the use of "their" property wealth to help support the education of children other than "their" children. See App. 62-66 and App. 226-233. Those arguments are adopted by this respondent. As the trial court pointed out:

> [I]t is no more unconstitutional for all the taxpayers of the Burlington school district to pay taxes which benefit students throughout the state than it is for the largest taxpayer in the Burlington district, the corporate owners of the

> Wolf Creek Generating Plant, to pay any taxes toward education when those corporate owners have no children to educate in the public school system.
>
> In today's mobile and heterogeneous society, each taxpayer benefits or suffers from the quality or lack of quality of the education received by Kansas students. Each of us receives an indirect benefit from the education from all Kansas school children.

App. 231. The whole purpose of a uniform levy and "recapture" of any excess dollars is to equalize *ad valorem* tax levies across the state and to treat the dollars generated as state dollars. App. 227. Nonetheless, Petitioners complain because imposition of a statewide uniform tax means they now are paying the same general mill levy for public education as all other Kansas property taxpayers. Instead, petitioners argue they alone are privileged to enjoy the financial benefits of the huge power plant located in their area by paying less in taxes than other Kansans pay to educate children in the rest of the state. As the Kansas Supreme Court observed, "It would be difficult to conclude that a uniform mill rate to fund education is an excessive taking violative of the respective constitutional provisions." App. 66.

As grounds for this Court exercising its discretionary jurisdiction, petitioners assert the opinions below conflict with two decisions of this Court, specifically *Village of Norwood v. Baker*, 172 U.S. 269 (1898), and *Myles Salt Co. v. Iberia Drainage Dist.*, 239 U.S. 478 (1916). Respondent believes both cases are inapplicable because they deal with special assessments levied for public improvements

to property, while the present controversy involves a uniform statewide general tax to help support a constitutionally-mandated statewide system of public schools. See Kan. Const. Art. 6, § 1.

As the *Village of Norwood* decision itself noted, in terms of tax theory, special assessments are distinctly different from a general levy of taxes because the special assessment proceeds on a theory that the property charged therewith derives an increased value from the improvement. 172 U.S. at 279-280. A general levy of taxes, however, rests upon the ground that a citizen may be required to make contribution in return for the general benefits of government. As the *Norwood* court observed, "special assessments are a peculiar species of taxation." 172 U.S. at 280.

This respondent does not believe litigation over storm sewers and road extensions is in any way comparable to delivery of public education which this Court has repeatedly described as "perhaps the most important function of state and local governments." *Brown v. Board of Education*, 347 U.S. 483, 493 (1954). The vital role of education in a free society was articulated by this Court forty years ago as follows:

> Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing

> him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be available to all on equal terms. *Ibid.*

Kansas specifically recognizes in its constitution that education is a statewide interest. That is why the people of Kansas require in the constitution that their legislature:

> provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools, educational institutions and related activities which may be organized and changed in such manner as may be provided by law. Kan. Const. Art. 6, § 1.

The state's constitution further recognizes the statewide importance of proper financing of education when it expressly mandates that the legislature "make suitable provision for finance of the educational interests of the state." Kan. Const. Art. 6, § 6(b). For petitioners to put the obvious statewide interests of public education on the same level as local sewer and road improvements is absurd.

In addition to the inapplicability of the cases petitioners claim to be in conflict, they inappropriately request this Court delve into a searching judicial scrutiny over the relative benefits of Kansas' public education system to specific geographic or demographic sectors in the state. Such an exercise directly conflicts with this Court's admonitions in *San Antonio School District v. Rodriguez*, 411 U.S. 1 (1972) that it is not the proper role of

the federal judiciary to judge the complexities of financing and managing a statewide public school system, as well as determine a demonstrable correlation between education expenditures and the quality of education. 411 U.S. 41-43. The Court said:

> The ultimate wisdom as to these and related problems of education is not likely to be divined for all time even by the scholars who now so earnestly debate the issues. In such circumstances, the judiciary is well advised to refrain from imposing on the States inflexible constitutional restraints that could circumscribe or handicap the continued research and experimentation so vital to finding even partial solutions to educational problems and to keeping abreast of ever-changing conditions.

411 U.S. at 43. How else can the justices of this Court determine the benefits derived to society and particular taxpayers? Petitioners invite this judicial balancing act by conceding on page 10 of their brief that they would have no quarrel with the levy of a "*reasonable* tax" to assist the education of other district's children. (Emphasis by petitioners). Just how Petitioners expect this Court to determine the level of "reasonableness" is unknown. One can only imagine the complexity of the arguments attendant to judicially placing an indirect "value" on the public education system of a state to all of its citizens, and the expertise and familiarity with state and local conditions so necessary to making an appropriate decision about the raising and disposition of educational revenues. 411 U.S. at 41. This Court should decline this invitation to participate in such a function, as it has done in the past. *Id.*

Finally, it just doesn't make sense to claim, as petitioners do, that they have little or no interest in ensuring a strong and viable state system of public schools. This Court often has noted its abiding respect for the unique role of education and its paramount place in our free society. The provision of education is one of the most important tasks performed by government: it ranks at the very apex of the function of a state. *Ambach v. Norwick*, 441 U.S. 68, 77 (1979). See also *Pyler v. Doe*, 457 U.S. 202, 221 (1982) (public education is **not** "merely some governmental benefit"); *Wisconsin v. Yoder*, 406 U.S. 205, 213, 237, 238-239 (1972) (education is necessary to "prepare citizens to participate effectively and intelligently in our open political system"); *Abington School Dist. v. Schempp*, 374 U.S. 203, 230 (1963) (Brennan, J. concurring) (public education is a "most vital civic institution for the preservation of a democratic system of government"); *McCollum v. Board of Education*, 333 U.S. 203, 212 (1948); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Interstate Consolidated Street R. Co. v. Massachusetts*, 207 U.S. 79 (1907).

As both Kansas courts below noted in rejecting this "taking" argument:

> Education is the greatest vehicle available to the state to prepare our children to be the neighbors, parents, leaders, workers, taxpayers, citizens, voters, and patriots of tomorrow. Having small pockets of well-educated students does not support an economy or society in the 1990's and beyond. App. 64.

Put bluntly, Petitioners' selfish, parochial arguments that "their" money must only go to educate "their" children makes trivial the significant role of public education long recognized by this Court. For them to argue they do not benefit, as society in general benefits, simply because they pay the same tax rate as anybody else is repugnant. The Petition for Writ of Certiorari on this basis should be denied.

(b). The One Person-One Vote Claim

At no point in the proceedings below did petitioners establish any disparities in the legislative district representation comprising the legislature, nor did they demonstrate that any school district in the state suffered from any voter disparities. App. 165.

Petitioners' argument apparently turns on how they interpret the provisions of the Education Article to the Kansas Constitution regarding the local empowerment to raise and spend money. Kan. Const. Art. 6. However, petitioners' interpretation of the state constitutional authority of local school districts under Kan. Const. Art. 6, § 5 was expressly rejected by the courts below, and that interpretation is not a federal question subject to review by this Court.

The Kansas Supreme Court interpreted the relative responsibilities of the legislature and local school boards to determine that the empowerment petitioners assert for local school officials rests only with the legislature. In this instance, the Kansas Supreme Court concluded, "The legislature, in exercising its power to finance public schools,

did not unduly impede the power of locally elected boards to establish, operate, and maintain schools." App. 34. Therefore, unless this Court is able to interpret the Kansas Constitution's provisions regarding governance of education in a manner contrary to the existing decisions of the state's highest court, the authority which petitioners claim is diluted doesn't even exist. This respondent adopts the reasoning of the court's below, particularly the trial court's handling of this specific issue at App. 164-165.

Conclusion

The issues here present no substantial federal question worthy of this Court's attention. This dispute over the propriety of Kansas' new school finance law specifically turns on the requirements of the Kansas Constitution and the specific facts attendant to the litigants below. Most certainly, petitioners' view that education is strictly a local matter, and of no particular significance to the state where those children hopefully will live and work, is contrary to the opinions of this Court, the courts of Kansas, and common sense. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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